

(1995) 03 KAPT CK 0001

In the Karnataka Appellate Tribunal

Case No : Sales Tax Appeal No. 206 of 1987

K. Mohidin Saheb, Kundapura

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 21(2), 6

Citation : (1995) 39 KarLJ 190

Hon'ble Judges : R. D. Deshpande, D.J.M.; V. G. Gujran, C.T.M.

Judgement

V.G. Gujran, CTM.-This appeal is directed against the revision order passed by the Deputy Commissioner of Commercial Taxes, Mangalore Division, Mangalore (hereinafter referred to as "Revisional Authority") on 18-12-1986 in No. KST/SMR 36 of 1986-87/M1.

2. Following are the necessary facts of the case:

The appellant is the dealer of Dry Fish, Fish Manure and fish oil at Kundapura, Dakshina Kannada district and was assessed for the year ended 30th September, 1980 by Commercial Tax Officer, Kundapur (hereinafter called the "assessing authority") on 30-9-1985 on a total and taxable turnover of Rs. 14,59,000/- and Rs. 1,74,442/- respectively. The assessing authority in the course of his assessment order allowed exemption on a turnover of Rs. 2,81,638-24 as local sales of fish oil on commission basis. On a review of assessment records leading to the assessment order referred to above, the revisional authority made out a case for action under Section 21(2) of Karnataka Sales Tax Act, since according to the revisional authority, the commission on a turnover of Rs. 2,81,638-24 was wrongly allowed. He, after following due procedures prescribed under law, directed levy of tax under Section 6 on a turnover of Rs. 1,96,223/- and withdrawal of exemption on a turnover of Rs. 2,81,638/- and directed levy accordingly. The appellant was aggrieved by the revision order and filed appeal before this Tribunal.

3. It is argued on behalf of the appellant that the appellant acted as buying

agent for purchase of fish oil and fishmeal for Bawa Fishmeal and Oil Co. and the purchase turnover of Rs. 2,81,638-24 was effected by the appellant as commission agent of the said M/s. Bawa Fishmeal and Oil Co., Mangalore, who has paid the tax due on the said turnover and the authorities below are not justified in rejecting the benefit of exemption to the appellant and in this context it was pointed out that the principal has owned the liability and notwithstanding the contradictory certificates issued by the principal, the appellant cannot be subjected to tax by withdrawal of exemption for the obvious reason that the appellant has not collected tax from the principal and therefore, since the transactions have been effected to by the appellant on behalf of the principal, the exemption once allowed cannot be withdrawn as done by the revisional authority. A fresh certificate issued by the principal owning the liability has been filed and the authorised representative prayed for allowing the appeal.

4. Secondly, it was argued that the authorities below are not justified in levying tax on the turnover of Rs. 1,96,223/- corresponding to sales in the course of export on the ground that the said purchases have been effected from unregistered dealer and attract liability under Section 6 of the Act. It is pointed out that the goods in question have been sold in the course of export against "H" declaration forms and the purchasers notwithstanding that they have been effected from unregistered dealers are liable to be treated as purchases in the course of export and qualify for exemption under Section 5(3) of Central Sales Tax Act, 1956. The authorised representative prayed for reliance on the decisions reported in *P.P.M. Thangiah Nadar v State of Tamil Nadu*, (1980)46 STC 67, *P.S. Sankaralinga Nadar v The Commissioner for Commercial Taxes, Board of Revenue, Madras-5*, and *Another*, (1982)49 STC 302, and *B.M. Ashraf and Co. v State of Karnataka*, (1992)84 STC 394. It is also pointed out that explanation (3) to Section 2 of Karnataka Sales Tax Act was incorporated only w.e.f. 1-4-1986 and therefore, the question of deciding as to when the sale to the appellant took place did not arise in the instant case and even on this account, the action of the revisional authority is liable to be held as illegal.

5. The learned State Representative conceded on the question of grant of exemption of goods purchased by the appellant as commission agent on behalf of M/s. Bawa Fishmeal and Oil Co. and stated that the matter may be remanded to the assessing authority to check-up as to whether the principals have really paid the tax or not. It is stated in respect of the 2nd issue, that in view of the decision reported in *Ponnu Saw Mills v State of Tamil Nadu*, (1980)45 STC 291, *Mohammed Ishaq and Sons v Commissioner of Commercial Taxes in Karnataka, Bangalore*, 1993(37) Kar. L.J. 26, the question as to whether the purchases do qualify for exemption from levy of tax under Section 6 on the ground that they are made in the course of export has to be decided by this Tribunal, since there is no finality as to the issue as to whether the transaction of purchases can be deemed to be in the course of export. It is stated that the scheme of Section 6 is independent of the deeming clause under Section 5(3) of Central Sales Tax Act.

6. We have heard rival arguments and verified the records. The case involves decision on the following 2 issues:

i) Whether in the facts and circumstances of the case, withdrawal of exemptions originally granted on the sales turnover of Rs. 2,81,638-24 said to have been effected on behalf of the principals is sustainable in the eye of law or not?

ii) Whether in the facts and in the circumstances of the case, the purchases from unregistered dealers corresponding to export sales attract tax under Section 6 or not?

7. In respect of the 1st question, it is relevant to observe here that the turnover of Rs. 2,81,638-24 was allowed as exemption relating to local sales of fish oil on commission basis. The assessing authority while allowing this exemption relied upon the certificate issued by M/s. Bawa Fishmeal and Oil Co., on 17-2-1982 (filed in page 29 of assessment records). This certificate indicates that the appellant has purchased fish oil worth Rs. 2,81,638-24 as purchasing agent on behalf of M/s. Bawa Fishmeal and Oil Co., and the certificate does not own the liability to tax on the part of the principal. The said principal has issued one more certificate dated 27-10-1986 stating that the appellant has acted as buying commission agent for and on behalf of the principal and the total value of goods purchased by the appellant on their behalf amounted to Rs. 2,81,638-24. Perusal of this certificate in page 30 of the revisional records indicates that there is no definite commitment by the principal to have remitted the tax. The appellant while filing the appeal memorandum has filed one more certificate dated 13-2-1987 to the effect that they have paid tax on the said turnover of Rs. 2,81,638-24. The crucial question which calls for a decision is as to whether the authorities below are justified in rejecting the exemption originally granted by the assessing authority. The turnover in the original assessment was treated as sales turnover. The certificate issued by the principal shows that the turnover represents purchases made on behalf of the principal by the appellant. This means, that the transactions by its very nature attracts tax on sale point; whereas as per the declaration, the transaction relates to purchases made on behalf of the appellant. Scrutiny of the records reveal that the total turnover as computed and disclosed pertains to sales realised by the appellant. The commodity in question viz., fish oil and fishmeal attracts tax sale point. It is beyond ones comprehension as to how a turnover of sales relating to a commodity taxable at sale point be exempted on the ground that the purchaser has remitted the tax. As per the original assessment records, it is seen that the turnover adopted does not pertain to purchasing commission agency business.

The statements filed in pages 35 and 36 of assessment records reveal that separate sale bills are issued in respect of sales to M/s. Bawa Fishmeal and Oil Co. The contradictory nature of the certificates issued by the so-called principals indicates that the same cannot be relied upon completely. It is therefore, necessary that the tax will have to be levied depending on the nature of transactions and the point at which the commodity attracts tax. In the instant

case, it is the sales made by the appellant which attracts tax and therefore it is natural that the tax should be authorised to be levied in the hands of the appellant unless it is proved beyond doubt that the purchaser being principal has remitted the tax on behalf of the agent i.e., appellant. This has not been conclusively proved from the records as indicated from the contradictory certificates issued by the principals which is relied upon by the appellant for the purpose of claiming the exemption. Therefore, we are of the opinion that the authorities below are justified in withdrawing the exemption granted on the turnover of Rs. 2,81,638-24 in the absence of clear evidence and inability on the part of the appellant to prove the claim of exemptions. We therefore, answer the first question against the appellant.

8. The 2nd question relates to propriety of action of authorities below in authorising levy of tax under Section 6 on the purchases corresponding to sales to exporters situated outside the State. In this connection, the stand taken by the appellant is that notwithstanding the goods having been purchased from unregistered dealers, the disposal of the said goods are to be treated as in the course of inter-State trade and commerce and the exception provided under Section 6(ii) of Karnataka Sales Tax Act relating to inter-State sales should be reckoned and therefore though the inter-State movement of the goods are liable to be treated as in the course of exports and therefore exempt, the disposal of goods will have to be treated at par with inter-State sales and tax under Section 6 cannot be attracted. In this context, the stand taken by the department is that there is no liability on the inter-State movement of the goods and the sales to exporters though situated outside the State and though resulted in inter-State movement do not fail under the purview of Central Sales Tax Act and hence not an inter-State sales as contemplated by Section 6(ii) of Karnataka Sales Tax Act. We have in this context guided ourselves by the decision of the Hon'ble High Court of Karnataka reported in B.M. Ashraf and Co., *supra*, according to which the levy of tax under Section 6 corresponding to sales exports within the State was authorised to be exempted. It is suggested to us by the Department that this decision is not applicable to the facts before us in view of the decision of the Hon'ble High Court of Karnataka reported in Madhur Trading Company and Others v State of Karnataka and Others, 1993(37) Kar. L.J. 258. We have also guided ourselves by the decision of the Hon'ble High Court of Karnataka in Madhur Trading Company and Others, *supra*, Their Lordships while deciding on the applicability of Section 6 of Karnataka Sales Tax Act stated as under:

"Under Section 6(ii), purchase tax is leviable on the earlier purchase, if the purchased goods are despatched to a place outside the State except as a result of inter-State sales. If such despatch of goods to a place outside a State is in the "course of export", the charge under Section 6 is attracted. The exception in favour of the goods despatched in the course of inter-State sales is because, the said inter-State sale is taxed under the Central Sales Tax Act, and the said revenue is collected by the State; the "goods" which did not bear the burden under Central Sales Tax Act, 1956. The idea is that the State should have the

benefit of one tax at least, from a transaction in such goods, involving sale or purchase".

Though the levy of tax under Section 6 in respect of purchases from weavers has been set aside on a different ground, their Lordships in Karnataka High Court while rendering their decision in the aforesaid case had held the levy of tax under Section 6 corresponding to inter-State movement of goods other than by way of inter-State sales i.e., to the exporters situated outside the State. Careful analysis of the two decisions of Hon"ble High Court of Karnataka in B.M. Ashraf and Co., supra, and Madhur Trading Company and Others, supra, reveal that in respect of purchases corresponding to sales to exporters within the State, tax under Section 6 is not leviable and in respect of purchases corresponding to sales outside the State to the exporters, tax under Section 6 is authorised. Though, it is suggested to us that there is a contradiction between these two judgments we do not accept the same. Evidently, the earlier decision reported in B.M. Ashraf and Co., supra, has not been referred to while rendering the judgment in Madhur Trading Company and Others, supra. It is therefore abundantly clear that these decisions are to be applied to the areas in which they are related and their Lordships evidently intended to distinguish an export sale to the exporter situated outside the State from an export sale to the exporter situated within the State. In our view, this can be the only conclusion which can be derived from the two decisions before us. Therefore, the relevant question is as to whether the provisions of Section 6 are attracted on purchases corresponding to inter-State movement of goods to exporters situated outside the State. It is without dispute that depending on the nature of disposal, provisions of Section 6(i) is not attracted in the instant case, since there is no consumption of goods purchased from unregistered dealers. It is also without dispute that the goods have been purchased from unregistered dealers and the primary requirement of attracting Section 6 is satisfied. So far as Section 6(ii) is concerned, it should be said that there is despatch of goods outside the State except as a result of direct sale in the course of inter-State trade and commerce. Even in this direction there are two opinions and two views are canvassed and they are: (i) that the despatch outside the State though for the purpose of export is in the course of inter-State trade and commerce and does not cease to be a sale simply because the said inter-State sale is exempt; (ii) the other view is that the sale does not partake the character of inter-State sale since it is outside the purview of Central Sales Tax Act for obvious reason that the provisions of Section 5(3) of Central Sales Tax Act specifically excludes the transaction from the purview of Central Sales Tax Act. In this context, the arguments canvassed on behalf of the appellant is that it is not the tax liability which is a relevant factor for the purpose of levying tax under Section 6 but what is relevant is as to whether the movement is in the course of inter-State trade and commerce. It is necessary in this context to observe that Section 6(ii) of Karnataka Sales Tax Act uses the word "as a direct result of sale or purchase in the course of inter-State trade and commerce". It is also relevant to observe here that the decision reported in Mohammed Ishaq and

Sons, supra, is in respect of commodities which attract tax under Section 5(4) of Karnataka Sales Tax Act and the Hon"ble Court did not interpret the concept as to whether movement of goods for export tantamounts to sale in the course of inter-State trade and commerce. At the same time, it is also relevant to observe that even in the case reported in Madhur Trading Company and Others, supra, their Lordships did not expressly lay down that movement of goods outside the State was as a result of sale in the course of inter-State trade and commerce. However, it is necessary, in this context to bear in view that in the instant case before us the movement of goods outside the State for the purpose of export is not a result of sale in the course of inter-State trade and commerce for the simple reason that such a transaction is out of the purview of sale in the State and sale in the course of inter-State trade and commerce stipulated under Central Sales Tax Act which in specific terms provides for as to what is meant by "sale in the course of inter-State trade and commerce." The definition of inter-State sales under Central Sales Tax Act is an exclusive definition and all movements outside the State cannot be treated as inter-State sales. Therefore, it is evident that the movement of goods, though inter-State trade and commerce for the purpose of complying with the export order pending with the inter-State buyers (exporters) cannot be deemed to be as a result of sale in the course of inter-State trade and commerce and therefore such movements do not come within the purview of exception provided under Section 6(ii) of Karnataka Sales Tax Act, 1957. In deciding as above, we are guided by the observation of the Hon"ble High Court of Karnataka in Madhur Trading Company and Others quoted above. In view thereof, we are inclined to hold that the rationale adopted in B.M. Ashraf and Co., supra, are not applicable to the transactions of inter-State movement and there is no direct decision on the subject except the decision in Madhur Trading Company and Others, supra. Therefore, we are inclined to hold that the transactions of the type before us, in so far as the question of levy of tax under Section 6 is concerned, do not come under the exception provided under Section 6(ii) of Karnataka Sales Tax Act. This is in view of the fact that the situation arising out of the decision reported in B.M. Ashraf and Co., supra, are not occurring in the case before us. We are inclined to answer this question against the appellant and we hold that the exceptions provided under Section 6(ii) are not available to the appellant and the provisions of Section 6 are attracted in respect of the purchases corresponding to inter-State movement of goods to the exporters, as it is clear from the facts that what is contemplated by Section 5(3) is the inter-State movement of goods which is exempt and not the corresponding purchases. We also do not see any conflict in the provisions of Section 6(ii) of Karnataka Sales Tax Act. In the result, the 2nd question is answered against the appellant upholding the levy of tax under Section 6 in respect of goods despatched to the exporters outside the State.

9. In view of the foregoing discussions, we pass the following:

ORDER

This appeal is dismissed.