(1992) 07 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No''s. 25704 and 25705 of 1991

Karnataka Pawn Brokers'' Association (Regd.) and another APPELLANT

Vs

State of Karnataka and another RESPONDENT

Date of Decision : 24-07-1992

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 11, 12, 12 (2), 2 (1) (f-2) (ii), 5 (5)

Citation : (1992) ILR (Kar) 2639

Hon'ble Judges : S. Rajendra Babu, J

Bench : Single Bench

Advocate : Ramachandra, for J. Jeshtmal, for the Appellant; H.L. Dattu, HCGA, for the Respondent

Judgement

S. Rajendra Babu, J.—In these two cases the first petitioner is the Karnataka Pawn Brokers'' Association and the second petitioner is a firm engaged in pawn broker''s business. They are calling in question the validity of a clarification issued by the Commissioner of Commercial Taxes. The clarification is to the following effect :

"(i) Pawn broker is a dealer under the provisions of the Karnataka Sales Tax Act, 1957; and

(ii) Pawn broker is liable to pay tax on the sale of unredeemed goods effected through auction if his annual turnover in such goods is not less than the minimum prescribed u/s 5(5) of the Karnataka Sales Tax Act, 1957."

2. It is contended on behalf of the petitioners that the State of Karnataka has enacted the Karnataka Pawn Brokers Act, 1961 (hereinafter referred to as "the Act") which provides for the regulation and control of the business of pawn brokers in the State of Karnataka; that in regard to unredeemed pledged articles the pawn broker has an option either to sue for the recovery of money in respect of which the goods were pledged or to sell the same as provided in section 176 of the Indian Contract Act, 1872. However, section 12 of the Act controls the sale

of pledged articles. The relevant provision thereof reads as follows :

"12. Sale of pledge and inspection of sale book. - (1) A pledge pawned for a sum exceeding ten rupees shall, when disposed of by the pawn broker, be disposed of by sale by auction and not otherwise, and the sale shall be conducted in accordance with such rules as they as may be prescribed."

Rule 20 of the Rules framed under the Act provides for procedure in auction of pledged goods. It is contended therefore that the sale of pledged articles is made by the pawn brokers not as owners of the goods, nor as agents of the pawner but under the authority of the statute and therefore when the property in the same do not vest in them there cannot be a sale for the purpose of the Karnataka Sales Tax Act so as to attract tax in their hands. A pawn broker becomes owner of the goods only in the circumstances mentioned in section 12(2) of the Act and in no other circumstances. The position of a pawn broker in regard to the pledged goods is in the nature of a bailee and not as an owner or agent. Consequently, it is submitted that neither section 11 of the Karnataka Sales Tax Act is attracted nor any other provision under which any tax could be levied upon pawn brokers in relation to sales effected by them of the unredeemed pledged articles.

3. The learned counsel appearing for the petitioners referred me to various provisions of the Act, the Contract Act and the Karnataka Sales Tax Act to impress upon me the force of his submissions made on behalf on them. However, in my view, no detailed reference of the same is required.

4. Explaining the rights available u/s 176 of the Contract Act the Supreme Court in Lallan Prasad Vs. Rahmat Ali and Another, stated as follows :

"That section 176 deals with the rights of a pawnee and provides that in case of default by the power the pawnee has (1) the right to sue upon the debt and the retain the goods as collateral security, and (2) to sell the goods after reasonable notice of the intended sale to the pawner. Once the pawnee by virtue of his right u/s 176 sells the goods the right of the pawner to redeem them is of course extinguished. But as aforesaid the pawnee is bound to apply the sale proceeds towards satisfaction of the debt any pay the surplus, if any, to the pawner. So long, however, the sale does not take place the pawner is entitled to redeem the goods on payment of the debt." B2b In Deputy Commissioner of Commercial Taxes v. A. R. S. Thirumeninatha Nadar Firm the Madras High Court noticed the scope of section 176 of the Contract Act. It was stated therein that a pawnee had a right to sell the goods u/s 176 of the Contract Act and the sale was an exercise of the statutory power and not as an agent. It was also noticed that the sales were nevertheless on behalf of the pledge, for, the pawn or pledge by itself did not make the pawnee or pledgee the owner of the goods. The very concept of a pledge carries with it the elements of custody and a power to sell the goods in default of payment and after the sale it is open to the pawnee to credit the sale proceeds towards the debts due from the pawner and the return the balance of sale proceeds to the pawner. In Luxmi Narayan Arjundas and Others Vs. State Bank of India, after referring to various text-books and the provisions of section 176 of the Contract Act the Patna High Court stated that by virtue of the special property, as disclosed in section 176 of the Contract Act, he gets a right to sell the thing pledged, but he still does so not as a full owner of the thing but by virtue of an implied authority from the pawner to do so. The sale that takes place is held for the benefit of both the parties. The sale proceeds are the property of the pawner. The pawnee has a right to appropriate the sale proceeds or any portion thereof for satisfaction of his dues from the pawner.

5. Therefore, the legal position that emerges on the basis of section 176 of the Contract Act, section 12 of the Act and the decisions referred to above is that the pawnee has the right to sell the goods pledged in case of default in the repayment of the debt by the pawner. But that right can be exercised only in the manner provided in section 12 of the Act and subject to the conditions prescribed in rule 20 of the Rules framed under the Act. Whatever may be the nature of the transaction it is clear that a sale takes effect, that is, the goods will pass to the purchaser on a sale taking place in terms of section 12 of the Act or section 176 of the Contract Act and the price of the goods will have to be paid to the to the pledge after adjusting the debts due from him. Thus, the right to sell the goods pledged and unredeemed in the event of default by the pawner carries with it the incident of sale. Therefore, in the course of business the pledgee or the pawn broker sells the goods. In the circumstances, the concept of business explained in section 2(1)(f-2)(ii) of the Karnataka Sales Tax Act will include the business of pawn broker as carrying with it an incidental activity to sell unredeemed goods may be subject to the conditions prescribed in section 12 of the Act or rule 20 of the Rules. Any transaction which is incidental or ancillary to the main business also constitutes business as provided in the definition of that term under the Karnataka Sales Tax Act. Thus, the pawn broker becomes a dealer for the purpose of the Karnataka Sales Tax Act. This aspect was explained by this Court in United India Insurance Co. Ltd. Vs. Commissioner of Commercial Taxes, Bangalore and Another, I may also advert to the decision of the Supreme Court in Member, Board of Revenue, West Bengal Vs. Controller of Stores, Eastern Railway, Calcutta and Others, wherein it was noticed that any activity which may be regarded as necessarily incidental or ancillary to its business also constitutes business and thereby the person engaged in such business becomes a dealer.

6. However, the learned counsel for the petitioners sought to distinguish these two decisions on the basis that there were respective provisions in the relevant Acts empowering the sale of salvaged goods or unclaimed goods. But that should not make any distinction in the present cases. Inasmuch as in the course of business the pledgee is empowered to sell the goods of course subject to the provisions of the Act and the Rules framed thereunder, then, when the goods are sold at his instance he becomes a dealer for the purpose of the Karnataka Sales Tax Act. Consequently, he is liable to pay the taxes as provided under the Act. The arguments advanced on behalf of the petitioners that they are not owners of

the goods nor do they act as agents of the pledge or that the sale effected is a statutory sale and not a sale in the empiric sense do not appeal to me. The law in the context of sales tax has travelled far from it. Even statutory sales are covered by the enactment. Hence, I do not find any substance in these petitions. Petitions are therefore dismissed. Rule discharged.

7. Writ petitions dismissed.

