(2000) 07 KAR CK 0029

In the Karnataka High Court

Case No : Criminal R.P. No. 607 of 1998

Karnataka State Industrial Investment and Development Corporation Ltd. — APPELLANT

Vs

Assistant Commissioner of Commercial Taxes — RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 421 (1) (a)
Karnataka Sales Tax Act, 1957 — Section 13 (2) (i), 13 (3) (b), 15
State Financial Corporations Act, 1951 — Section 29, 29 (1), 29 (4)

Citation : (2001) 105 CompCas 416 : (2000) ILR (Kar) 3399 : (2000) 4 KCCR 278 SN

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : Ashok B. Hinchigeri, for the Appellant; N.V. Prakash, SPP, for the Respondent

Judgement

This Judgment has been overruled by : State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, AIR 2006 SC 865 : (2006) 1 CTC 290 : (2006) 1 JT 180 : (2006) 1 SCALE 160 : (2006) 1 SCC 615 : (2006) 1 SCR 235 : (2006) 144 STC 331 : (2006) AIRSCW 169 : (2006) 1 Supreme 56

G. Patri Basavana Goud, J.—Sun Crush Fruits (P.) Limited (hereinafter to be called "the assessee") is due in a sum of Rs. 2,16,756 by way of arrears of sales tax for the year 1991-92. The respondent-Assistant Commissioner of Commercial Taxes initiated a proceeding before the learned Special JMFC (Sales Tax), Bangalore, at Criminal Misc. No. 1057 of 1996 for recovery of the said sum u/s 13(3)(b) of the Karnataka Sales Tax Act, 1957 ("the KST Act", for short). The learned magistrate issued fine levy warrant for recovery of the said amount u/s 421(1)(a) of the Criminal Procedure Code, 1973, by attachment and sale of the movable property of the assessee. The said movable property sought to be attached and sold was the plant and machinery. But the said plant and machinery, by then, had already been mortgaged and hypothecated in favour of the Karnataka State Industrial Investment and Development Corporation Limited, Bangalore ("KSIIDC", for short) The said KSIIDC is a financial corporation established u/s 3 of the State Financial Corporations Act, 1951 ("SFC Act", for short). The assessee is stated to be owing to the KSIIDC in respect of the loan for which it had mortgaged/hypothecated the plant and machinery, a sum of Rs. 1,38,31,361. By the time the learned magistrate issued fine levy warrant, KSIIDC had already, in exercise of its power u/s 29 of the State Financial Corporations Act, taken over possession of the plant and machinery mortgaged/ hypothecated. It was in execution of the warrant issued by the learned magistrate u/s 421(1)(a) of the Criminal Procedure Code that the said plant and machinery were sought to be sold. KSIIDC requested the learned magistrate that the said corporation, i.e., KSIIDC''s claim has precedence over the sales tax arrears due in view of Section 29(4) of the State Financial Corporations Act, and that it is only out of the residue of the money after adjustment towards costs of sale and discharge of debt due to KSIIDC that the respondent-authority would have the right to recover the sales tax arrears. The learned magistrate, however, by the order impugned herein, held that, since u/s 13(2)(i) of the Karnataka Sales Tax Act, charge is created in respect of the arrears of tax, same should get precedence. He accordingly overruled the objections of KSIIDC. The said KSIIDC has now come up in revision u/s 397 of the Criminal Procedure Code.

2. Section 13(2)(i) of the Karnataka Sales Tax Act, inter alia, provides that in respect of the whole of the amount of tax or any other amount due under the Act outstanding on the date of default, the same shall be a charge on the properties of the person or persons liable to pay the tax or any other amount due under the Act. There is, therefore, no doubt at all that in respect of the arrears of sales tax to the tune of Rs. 2,16,756 due from the assessee, there shall be a charge on the properties of the assessee including the plant and machinery. To recover the said sum, if a proceeding u/s 13(3)(b) of the Karnataka Sales Tax Act is initiated, then the learned magistrate would be justified in issuing warrant for recovery of the said amount by attachment and sale of any movable property of the assessee including the machinery hypothecated to the KSIIDC. This would be the position if we look to only the Karnataka Sales Tax Act and Criminal Procedure Code. If we look to the State Financial Corporations Act, however, the position would be different. The first part of Section 46B provides that the provisions of the said State Financial Corporations Act, and of any rules and orders made thereunder, shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of law other than the said Act. The second part of the said section however provides that, save as aforesaid, i.e., save as what is provided in the first part, the provisions of the said State Financial Corporations Act would be in addition to and not in derogation of any other law for the time being applicable to an industrial concern.

3. The KSIIDC has taken over possession of plant and machinery of the assessee

in exercise of its power u/s 29(1) of the State Financial Corporations Act, and it has also brought the said property to sale as it is authorised by Section 29(1) of the State Financial Corporations Act to transfer the said property even by sale. Though in the impugned order, there is a reference to an order of injunction passed by the City Civil Judge restraining KSIIDC from selling of the said property, it is submitted in the course of arguments that the stay has since been vacated, and that the property is to be brought to sale. When the property is so sold, Sub-section (4) of Section 29 of the State Financial Corporations Act provides that, the money so received shall have to be held by KSIIDC in trust to be applied firstly in payment of costs, charges and expenses, i.e., costs and charges incurred by KSIIDC in taking action u/s 29(1) of the State Financial Corporations Act, and secondly in the discharging of debt due to the financial corporation, i.e., in adjusting a sum of Rs. 1.38,31,361 due from the assessee to the KSIIDC and the residue of the money so received shall have to be paid to the person entitled thereto, i.e., the assessee. Though, u/s 13(2)(i) of the Karnataka Sales Tax Act, in respect of the arrears of tax and other amount due under the Karnataka Sales Tax Act, charge is created on the property of the assessee, it is not the first charge as was the case with Section 11AAAA of the Rajasthan Sales Tax Act, 1954, a case in relation to which the learned magistrate was referring to in the impugned order. Since, unlike in the Rajasthan Sales Tax Act, the charge u/s 13(2)(i) of the Karnataka Sales Tax Act is not the first charge, and since, u/s 46B of the State Financial Corporations Act, the provisions of the said Act would have the effect notwithstanding anything inconsistent therein contained in the Act, it has to be concluded that the same shall have to be apportioned in order of priority as specified in Sub-section (4) of Section 29 of the State Financial Corporations Act, viz., firstly, in meeting the costs of KSIIDC under Sub-section (1) of Section 29 of the State Financial Corporations Act, secondly, in the payment of amount due from the assessee to the KSIIDC towards loan, and thirdly, the residue amount being required to be paid to the assessee. It is only in respect of that third category that any claim towards arrears of sales tax could be made.

4. N. V. Prakash, the learned Additional SPP submits that, on transfer of business, both the transferor and the transferee would be jointly and severally liable to pay the arrears or any other amount due. Sri Prakash therefore submits that in exercise of its powers u/s 29 of the State Financial Corporations Act, the KSIIDC has taken over the assets of the assessee, then the assessee, as transferor and the KSIIDC, as transferee are, in view of Section 15 of the Karnataka Sales Tax Act, jointly and severally liable to pay the arrears of sales tax, and as such, the amount is liable to be recovered from KSIIDC also. But, as pointed out by Sri Ashok Hinchigeri, learned counsel for the petitioner-KSIIDC, on taking over of the management or possession of the properties of the assessee or both, the KSIIDC does not become the transferee of that property, nor does it become the owner of the property. No doubt, Sub-section (5) of Section 29 of the State Financial Corporations Act creates a fiction wherein, for a

limited purpose, KSIIDC is deemed to be the owner of the concern, the assessee herein. But, as I said, that is only for a limited purpose, viz., of filing of suits by or against the concern and not for any other purpose. Since Sub-section (1) of Section 29 of the State Financial Corporations Act even empowers the KSIIDC to sell the property of the assessee, it could be seen from Sub-section (2) of the said Section 29 that, any transfer of property so made in exercise of its power under Sub-section (1) of Section 29, shall vest in the transferee, all rights in or to the property transferred, as if the transfer had been made by the owner of the property. It is, therefore, clear that, even after the properties are taken over by the KSIIDC in exercise of its power under Sub-section (1) of Section 29 of the State Financial Corporations Act, the assessee continues to be the owner, and even if KSIIDC transfers the property, it is as if the transfer had been made by the assessee itself in view of Sub-section (2) of Section 29 of the said Act. Section 15 of the Karnataka Sales Tax Act, therefore, cannot be pressed into service to urge that, as transferee, KSIIDC is jointly and severally liable to pay the tax. At the same time, I have to make it clear as to the applicability of Section 15 of the Karnataka Sales Tax Act, at a later stage. It is this way. When the KSIIDC sells the property of the assessee, by virtue of Sub-section (2) of Section 29 of the State Financial Corporations Act, it is as though the assessee itself has transferred the said property in favour of the transferee by sale. The position then would be that the assessee would be in the position of transferor and the purchaser of the property would be in the position of transferee. At that stage therefore, there would be the transfer or/assesses on one side, and the transferee/purchaser on the other. Section 15 of the Karnataka Sales Tax Act would very much come into play at that stage, and both the assessee and the purchaser of the property would be jointly and severally liable to pay the arrears of sales tax concerned herein. It is, therefore, necessary for the KSIIDC to make it clear, when it advertises the property for sale, that after the said sale, there would be a charge on the property created u/s 13(2)(i) of the Karnataka Sales Tax Act in respect of the sales tax arrears due from the assessee, and further that after the said sale, the purchaser also, as much as the assessee, would be, by virtue of Section 15 of the Karnataka Sales Tax Act, jointly and severally liable to pay the said arrears. Any purchaser of the property should go ahead with the transaction with his eyes wide open to this factual and legal position.

5. I, therefore, direct that the property of the assessee, now in the hands of the KSIIDC u/s 29 of the State Financial Corporations Act, shall be sold with the intending purchaser being made aware of the charge u/s 13(2)(i) of the Karnataka Sales Tax Act, and that he would be jointly and severally liable u/s 15 of the Karnataka Sales Tax Act as referred to above. The sale proceeds shall be adjusted in the manner provided under Sub-section (4) of Section 29 of the State Financial Corporations Act, in which even firstly, the expenses incurred by the KSIIDC u/s 29(1) of the State Financial Corporations Act shall be adjusted, and secondly, the amount due from the assessee to the KSIIDC shall be adjusted, and then, whatever that remains thereafter out of the sale proceeds,

being the amount belonging to the assessee and held in trust by KSIIDC. The respondent-authority shall immediately serve notice u/s 14 of the Karnataka Sales Tax Act on KSIIDC, in respect of the sales tax arrears concerned in this proceeding. Out of the said residue amount from out of the sale proceeds, KSIIDC shall discharge the liability of the assessee due to the authorities from out of the abovesaid residuary sale proceeds in due compliance with the said notice u/s 14 of the Karnataka Sales Tax Act. KSIIDC, as directed, should immediately bring the property of the assessee of which it has taken possession, for sale to enable recovery of sales tax arrears concerned herein. It is made clear that serving of a notice on KSIIDC u/s 14 of the Karnataka Sales Tax Act does not come in the way of the present proceeding u/s 13(5)(b) of the Karnataka Sales Tax Act initiated at Civil Miscellaneous No. 1507 of 1996, being continued because, as Sub-section (3) of Section 13 of the Karnataka Sales Tax Act makes it clear at the outset, the recovery under the said Sub-section (3) would be without prejudice to any other mode of collection. In addition to serving a notice u/s 14 of the Karnataka Sales Tax Act therefore, the respondent-authority would be at liberty to proceed with Civil Miscellaneous No. 1507 of 1996 u/s 13(3)(b) of the Karnataka Sales Tax Act, wherein the learned magistrate could still proceed to recover the sales tax arrears due u/s 421 of the Criminal Procedure Code if any property of the assessee is available other than what is taken possession of by KSIIDC.

6. The impugned order modified accordingly, and the petition disposed of accordingly.

