(1990) 11 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No''s. 8533, 8548 and 8539 of 1984 connected with 13814, 13815, 15448, 15449 and 15450 of 1985

Kaypee Industries APPELLANT

Vs

Commercial Tax Officer and another RESPONDENT

Date of Decision : 16-11-1990

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 21 (2), 5 (1)

Citation : (1992) 84 STC 384

Hon'ble Judges : S. Mohan, C.J;Shivaraj V. Patil, J

Bench : Division Bench

Advocate : G. Balakrishna Sastry, for the Appellant; H.L. Dattu, for the Respondent

Judgement

S. Mohan, C.J.—All these writ petitions can be dealt with under a common judgment.

2. The facts in W.P. No. 8533 of 1984 briefly stated are as follows :

The petitioners, a registered partnership firm is carrying on the business of manufacture and sale of confectionery, sugar-candy and sugar syrup. They have been assessed to sales tax under the Karnataka Sales Tax, Act, 1957, concerning the sale of sugar-candy and sugar syrup. Originally it was thought by the assessing authority that the petitioners would be entitled to the exemption under entry No. 31B of the Fifth Schedule to the Karnataka Sales Tax Act, 1957. Accordingly, assessments were passed on 27th July, 1978, granting the benefit of exemption for the assessment year commencing 1st July, 1976 and ending by 30th of June, 1977.

However, on 4th August, 1982, finding that it was no longer entitled to exemption, the Deputy Commissioner of Commercial Taxes (1st respondent) issued show cause notice proposing to review the order of the assessing authority on the ground that entry 31B under the Fifth Schedule, cannot be applied to the sale of sugar syrup, and therefore he proposed to tax at 4 per cent multi-point u/s 5(1) of the Karnataka Sales Tax Act, 1957.

3. The petitioners resisted the proposals stating, inter alia, that sugar syrup is well within the exemption provision of entry 31B of the Fifth Schedule. Thereupon an order was passed on 24th March, 1984, exercising the powers u/s 21(2) of the Karnataka Sales Tax Act, 1957 to the following effect :

"BEFORE THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (ADMN.), CITY DIVISION II, BANGALORE-9 Case No. SMR. 52/82-83. Present : N. Nagaraju Deputy Commissioner of Commercial Taxes (Admn.), City Division II, Bangalore. Name and address of the assessee : M/s. Kaypee Industries, Mysore Road, Bangalore. Assessment year : 1st July, 1976 to 30th June, 1977. Status of the assessee : Partnership firm.

Sub : K.S.T. Act, 1957 - Suo motu revision proceedings u/s 21(2) of the Karnataka Sales Tax Act, 1957, in the case of M/s. Kaypee Industries, Mysore Road, Bangalore, for the assessment period from 1st July, 1976 to 30th June, 1977.

Ref : 1. Notice u/s 21(4) of the Karnataka Sales Tax Act, 1957 dated 4th August, 1982 for the above year.

2. Written objections dated 21st August, 1982, 27th July, 1983, 16th August, 1983, etc., filed by the counsel for the assesses-firm.

Order u/s 21(2) of the Karnataka Sales Tax Act, 1957, dated 24th March, 1984.

On verification of the assessment records for the assessment period from 1st July, 1976 to 30th June, 1977, in the case of M/s. Kaypee Industries, Mysore Road, Bangalore (bearing K.S.T.R.C. No. 03310029-9 and C.S.T.R.C. No. 03360029-6) it was found that the orders passed by the Commercial Tax Officer, XII Circle, Bangalore, u/s 12(2) of the Karnataka Sales Tax Act, 1957 read with rule 18(2) of the Karnataka Sales Tax Rules, 1957 (hereinafter called ''the Act and the Rules'') on July 27, 1978 is irregular, erroneous and prejudicial to the interests of revenue for the following reasons :

The assessing authority, i.e., the Commercial Tax Officer, XII Circle, Bangalore, in his order dated 27th July, 1978, passed for the assessment period from 1st July, 1976 to 30th June, 1977 has exempted the sales turnover from payment of tax in respect of ''sugar syrup'' to the tune of Rs. 7,41,485 on the ground that the ''sugar syrup'' falls under entry 31B of the Fifth Schedule to the Karnataka Sales Tax Act, 1957.

Entry 31B of the Fifth Schedule to the Karnataka Sales Tax Act, 1957, reads as ''sugar'' other than sugar-candy, confectionery and the like, and which evidently shows that ''sugar syrup'' is not included in this entry for exemption. The sugar syrup sold by the assesses is commercially and in its popular sense a different commodity. This commodity ''sugar syrup'' does not find entry in any of the

Schedules to the Karnataka Sales Tax Act, 1957. Hence, commodity sold by the assessee, viz., ''sugar syrup'', which is a manufactured product is taxable u/s 5(1) of the Act, 1957 at 4 per cent (multi-point).

2. Therefore, a notice u/s 21(4) of the Act was issued on 4th August, 1982 to the assesses-firm giving them an opportunity to show cause as to why the order of the assessing authority should not be revised and as to why the sales tax at 4 per cent u/s 5(1) of the Act on a turnover of Rs. 7,41,485 of sugar syrup besides levying additional tax at 7 1/2 per cent u/s 6B of the Act for the period from 1st April, 1976 to 31st March, 1977 should not be levied. This notice was served on the assesses-firm on 10th August, 1982 and objections were called for, for the proposed levy of taxes.

3. The case was posted for hearing on 24th August, 1982. On 21st August, 1982, Sri R. Nagaraj, Advocate and the counsel for the assesses-firm, has filed memo stating that he is awaiting the decision of the case bearing, S.T.R.P. Nos. 46 and 47 of 1978 which is pending before the honourable High Court of Karnataka, Bangalore, and for which he has requested for postponement of this case till the decision of the honourable High Court of Karnataka, Bangalore. Further endorsements dated 10th December, 1982 and 22nd February, 1983 for which the same reasons were assigned by him on 28th July, 1983 and 16th August, 1983, respectively. Again, further endorsements dated 1st September, 1983 and 5th October, 1983 were also served on the assesses-firm for which Sri R. Nagaraj, Advocate and counsel for the assesses-firm has approached and heard.

4. The learned counsel for the assesses-firm has relied on the judgment in the case of Krishna Products in S.T.R.P. Nos. 46 and 47 of 1978 which was pending before the honourable High Court of Karnataka, Bangalore, and not filed any other objections for the proposed levy of taxes.

5. The honourable High Court of Karnataka, Bangalore, in S.T.R.P. Nos. 46 and 47 of 1978 dated 12th January, 1984 in the case of Krishna Products Vs. State of Karnataka, recently held that the goods ''sugar syrup'' is not an exempted commodity as per entry 31B of the Fifth Schedule of the Karnataka Sales Tax Act, 1957 and the sugar has been converted into liquid by boiling it to a certain temperature after adding water and salt and the same has been sold in bottles to the confectioners and bakers. It is also held that the view taken by the appellate authorities is not unreasonable and further also held that entry 31B means sugar and not any form of sugar or variety of sugar. Varieties of sugar may fall within the meaning of the word ''sugar'' but not the form of sugar. ''Sugar syrup'' is a form of sugar and certainly not the sugar within the meaning of entry 31B.

6. In view of the said decision of the honourable High Court of Karnataka and the position of law as discussed in the foregoing paragraph, the contention of the assesses-firm have no merit and, therefore, rejected.

7. In the result, and in exercising the powers vested in me u/s 21(2) of the Karnataka Sales Tax Act, 1957, I pass the following order :

(a) The assessment order dated 27th July, 1978 passed by the Commercial Tax Officer, XII Circle, Bangalore, for the period from 1st July, 1976 to 30th June, 1977 u/s 12(2) of the Karnataka Sales Tax Act, 1957, is modified to the extent of levying sales tax on ''sugar syrup'' to the tune of Rs. 7,41,485 at 4 per cent and additional tax at 7 1/2 per cent u/s 6B of the Karnataka Sales Tax Act, 1957, as indicated below :

(b) The revised computation of total and taxable turnovers is as under :

Amount of turnover : Rs. 9,39,207.82 Less : Deductions and exemptions : 1. Tax collected Rs. 9,355.31 2. Sale of sugar-candy Rs. 26,625.20 -------------- Rs. 35,980.51 ---------------- Taxable turnover Rs. 9,03,227.31 ---------------- Classification : 1. Sale of ''sugar syrup taxable u/s 5(1) of the Act Rs. 7,41,485.00 4% Rs. 29,659.00 2. Sale of confectionery as I dealer Rs. 55,416.31 6% Rs. 9,325.00 3. Sale of glucose Rs. 756.00 4% Rs. 30.25 4. Sale of empty gunnies Rs. 4,490.00 2% Rs. 89.80 5. Sale of empty tins and barrels Rs. 1,080.00 4% Rs. 43.20 --------------- -------------- Total tax payable Rs. 9,03,227.31 Rs. 29,147.65 --------------- -------------- Total tax payable Rs. 39,147.65 Add : Additional tax at 7 1/2 per cent u/s 6B of the Karnataka Sales Tax Act, 1957 Rs. 2,936.10 ---------------- Total tax and additional tax payable Rs. 42,083.75 ----------------

8. The Commercial Tax Officer, XII Circle, Bangalore, is directed to issue revised demand notice accordingly.

Sd./- N. Nagaraju, Deputy Commissioner of Commercial Taxes (Admn.), City Division-II, Bangalore."

4. It is this order which is questioned in the writ petition. The only ground that is urged before us is based on the ruling of this Court reported in the case of Bagi v. Assistant Commissioner of Commercial Taxes [1989] 74 STC 51. According to the learned counsel for the petitioner, if sugar syrup answers the definition contained in tariff item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944, that matter requires to be examined. Looked at from that point of view, the impugned order cannot be sustained.

5. In opposition to this, the learned counsel for the Revenue would draw our attention to the Krishna Products Vs. State of Karnataka, where this point was squarely dealt with and it was held thereunder, that sugar syrup will not fall under entry 31B of the Fifth Schedule to the Karnataka Sales Tax Act, 1957. Therefore, the matter is no longer res integra.

6. We find that S.V. Bagi Vs. Assistant Commissioner of Commercial Taxes, Appeals, Belgaum Division, Belgaum, has no application to the facts of this case. Only when the transactions are of the character of inter-State sales, the question of applying section 14 of the Central Sales Tax Act, in relation to the declared goods would arise. Though ruling in S.V. Bagi Vs. Assistant Commissioner of Commercial Taxes, Appeals, Belgaum Division, Belgaum, is of that type, from the

narration of the facts, it will be clear that all the transactions of the petitioner fall under the intra-State sales. Therefore, we are governed only by the Karnataka Sales Tax Act. The only claim for exemption could be under entry 31B of the Fifth Schedule to the Karnataka Sales Tax Act, 1957. The matter directly came up for consideration in Krishna Products Vs. State of Karnataka, and it was held by a Division Bench as follows :

"Entry 31B of the Fifth Schedule to the Karnataka Sales Tax Act, 1957, means sugar and not any form of sugar or variety of sugar. Varieties of sugar may fall within the meaning of the word ''sugar'', but not forms of sugar. Syrup is a form of sugar and therefore it does not fall within the meaning of the word ''sugar'' and is not exempt."

Therefore, as rightly contended by the learned counsel for the Revenue the matter is no longer res integra. Consequently, we dismiss these writ petitions with costs. Counsel''s fee Rs. 1,000 to be paid to the State.

8. Writ petitions dismissed.

