

(1993) 11 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No. 4816 of 1988

Kirloskar Electric Company Ltd. and another

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 10-11-1993

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2 (4), 2 (k)

Citation : (1994) 94 STC 76

Hon'ble Judges : K. Shivashankar Bhat, J

Bench : Single Bench

Advocate : Naganand for M/s Sundaraswamy, for the Appellant; C.V. Kumar, H.C.G.P., for the Respondent

Judgement

Shivshankar Bhat, J.—The first petitioner is a manufacturer of electrical motors and other electrical goods. In the original writ petition, petitioners sought the quashing of the proposition notice (annexure Q dated March 1, 1988), whereby the second respondent had proposed to levy entry tax for the year 1982-83 (April 1, 1982 to March 31, 1983) under the provisions of the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979 (for short "the Act") in respect of a few goods brought by the first petitioner-company for being used as inputs in the manufacture of electrical goods by the first petitioner-company. Those goods used as inputs were mainly aluminium ingots, industrial gases, iron and steel, petroleum products, coal and coke, etc. These are purchased for use either directly or incidentally in the course of the manufacturing activity of the first petitioner-company. The other relief sought by the petitioners was for declaring that entry tax is not leviable in the case of the petitioner, -

- (a) on goods other than electrical goods manufactured and sold by petitioner,
- (b) on goods imported from abroad,
- (c) on goods purchased by petitioner locally in Bangalore, and

(d) on goods falling under entry 16B or 18 of the Schedule to the Act during the period covered by annexure E.

2. Subsequently, petitioners by amending the writ petition sought for one more relief for quashing the assessment order dated March 14, 1988 (annexure J) and the notice of demand dated March 26, 1988 (annexure H).

3. Petitioners point out that originally the Act provided for the levy of entry tax on textiles, tobacco and sugar up to March 31, 1982 and with effect from April 1, 1982, the Schedule was amended by the addition of 13 more items.

4. There is no dispute that the articles/goods bought by the first petitioner are found in the Schedule with effect from April 1, 1982. But according to the petitioners, the first petitioner is not a "dealer" in those goods and those goods were used as inputs, etc., in the manufacture of electrical goods and the first petitioner's business is confined to the manufacture of the electrical goods and sale of those manufactured goods.

5. Mr. Naganand, the learned counsel for the petitioners, contended that the situation, probably, was different after April 1, 1983, because, from then onwards, item 16B was introduced in the Schedule, which reads :

"All raw materials, component parts and inputs which are used in the manufacture of an intermediate or finished product, -

(i) when brought into local areas by an industrial unit; or

(ii) when brought into local areas by any dealer who, after having so brought, sells or supplies the same to an industrial unit located either within the same local area or outside it."

6. The learned counsel also referred to sections 3, 4, 28 of the Act and contended that during April 1, 1982 to March 31, 1983, the liability to pay entry tax is only on the dealer in scheduled goods and a manufacturer of electrical goods, bringing in other goods to be used in the manufacture of the electrical goods cannot be termed as a dealer in the goods brought in, for the use in the manufacture. According to Mr. Naganand, the term "dealer" connotes the person to be regularly engaged in the activities of buying and selling in the goods and a person who has to bring certain goods for use in the manufacture of some other goods, is not a dealer in the former goods.

7. The question, therefore, is whether, the first petitioner was a "dealer" in the goods referred to in the impugned show cause notice, even though they are "scheduled goods" under the Act.

8. It was contended that apart from the normal meaning attributable to the term "dealer", it is also relevant to refer to the further amendments made to the Act after March 31, 1983, which, by contrast, would support the meaning attributed to the earlier provisions of the Act by the petitioners.

9. Section 3 is the charging section, which levies a tax "on the entry of the scheduled goods into a local area for consumption, use or sale therein". As per section 3(2) the tax levied shall be payable by "registered dealer or the dealer liable to get himself registered who brings or causes to be brought into the local area such goods, etc.".

10. Section 4(1) as it then stood stated that "every dealer in scheduled goods shall get himself registered" under the Act.

11. A reading of these provisions shows that, taxable event is the entry of goods into a local area for purposes stated in section 3(1) and the liability to pay tax is on the registered dealer or dealer liable to be registered. The goods are to be scheduled goods.

12. In the instant case, there is no dispute that goods are "scheduled goods" after April 1, 1982 and the basic question is whether the first petitioner is a dealer in the said goods.

13. Section 28 in no way aids the contention of the petitioners, because, it declares that nothing in the Act shall apply to persons who are not dealers in scheduled goods. Similarly, the fact that inputs of industrial goods and other goods were specifically brought into the Schedule of the Act only after April 1, 1983, would not militate against the levy of the tax earlier, if the particular goods are found specifically in the Schedule earlier, as in the instant case. A scheduled goods, specified in the Schedule to the Act may have the quality of being used as an input in the manufacture of another goods; similarly, the fact that the term of "dealer" is now specifically defined in the Act as against the earlier provision, incorporating the definition of the term in the Karnataka Sales Tax Act, 1957, would not make any difference to the meaning attributable to that term earlier. The meaning of the term has to be understood in the manner the Act defined the term during the relevant period. The Act, quite likely, was amended subsequently, to make it self-contained, instead of relying on another Act for the meaning of the relevant word.

14. Mr. Naganand, relied on the decision of the Supreme Court in Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, wherein the court held that all the provisions of an Act should be read together, as constituting the Act an integrated code and that the legislative intent, is presumed to run uniformly through the entire conspectus of the provisions. In that case, question was whether a "goodwill" of a business concern can be considered as an "asset" for the purpose of capital gain; the court negated the Revenue's contention that it is an asset, because, there was no machinery available to assess the cost of acquiring the goodwill which is self-generated in the course of business. Machinery provisions, were, thus considered, to find out the scope of the charging sections. At page 975 of AIR (299 of ITR), the court held :

"All transactions encompassed by section 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be

applied must be regarded as never intended by section 45 to be the subject of the charge. This reference flows from the general arrangement of the provisions in the Income Tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus, the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise, one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head."

15. The learned counsel referred to sections 3(2) and 4(1) to contend that the liability to pay the tax is on the dealer in scheduled goods and this liability limits the scope of the charge u/s 3. The contention certainly is quite sound and acceptable. But, the proposition behind this contention takes the petitioners nowhere, except to face the liability to pay the tax charged u/s 3, unless, it is shown that the first petitioner is not a dealer in scheduled goods.

16. To be a dealer in goods, it is not necessary that the said dealer should engage in the act of buying and selling in the same goods. It is true, the conservative meaning given to the term "dealer" requires such a person to engage in the act of buying and selling in the particular goods, to be considered as a dealer in the said particular goods; an incidental buying or selling or the activity of dealing in the goods being ancillary to some other dominant activity, was not sufficient to make him a "dealer" in the said goods.

17. In this regard, the learned counsel for the petitioners relied on the decision of the decision of the Supreme Court in State of Gujarat Vs. Raipur Manufacturing Company Ltd., . The Supreme Court held that in the turnover of a person carrying on the business of selling one commodity will not be included the price received by him by sale of another commodity, unless he carried on the business of selling that other commodity. At page 5, the court observed :

"The expression "business" though extensively used in taxing statutes, is a word of indefinite import. In taxing statutes, it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be

a course of dealings, either actually continued or contemplated to be continued with a profit-motive, and not for sport or pleasure. Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a "profit-motive". By the use of the expression "profit-motive" it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity. In actual practice, the profit-motive may be easily discernible in some transactions : in others it would have to be inferred from a review of the circumstances attended upon the transaction. For instance, where a person purchases a commodity in bulk and sells it in retail it may be readily inferred that he has a profit-motive in entering into the series of transactions of purchase and sale. A similar inference may be raised where a person manufactures finished goods from raw materials belonging to him or purchased by him, and sells them. But where a person comes to own in the course of his business of manufacturing or selling a commodity, some other commodity which is not a by-product or a subsidiary product of that business and he sells that commodity, cogent evidence that he has intention to carry on business of selling that commodity would be required. Where a person in the course of carrying on a business is required to dispose of what may be called his fixed assets or his discarded goods acquired in the course of the business, an inference that he desired to carry on the business of selling his fixed assets or discarded goods would not ordinarily arise. To infer from a course of transactions that it is intended thereby to carry on business ordinarily the characteristics of volume, frequency, continuity and regularity indicating an intention to continue the activity of carrying on the transactions must exist."

18. It was also held that intention to carry on business in the particular commodity must exist to hold the person as carrying on business in it.

19. It was a decision rendered under the particular definition of the term "business" in the Bombay Sales Tax Act. In fact, several State laws were in similar terms. After a few judicial pronouncements, limiting the operation of the term "dealer" or "business" as above, the definition of relevant words were amended in the sales tax laws and to include, even incidental transaction within the scope of the term "dealer" or "business".

20. The term "dealer" was sought to be defined under the Act before me, as per section 2(4), by attracting the provisions of the Karnataka Sales Tax Act. Section 2(4) of the Act, at the relevant time was as follows :

""dealer" shall have the meaning assigned to it in clause (k) of section 2 of the Karnataka Sales Tax Act, 1957".

21. Section 2(k) of the Karnataka Sales Tax Act reads :

""dealer" means any person who carries on the business of buying, selling supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes, - " (rest omitted here as unnecessary)

22. Scope of the above definition depends upon the meaning of the word "business", which is defined u/s 2(1)(f-2) thus :

"(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern."

23. If a person is engaged in the manufacture of any goods then, as per sub-clause (ii) referred to above, any transaction in connection with, or incidental or ancillary to such manufacture, also is considered as business.

24. Therefore, in view of the incorporation of the definition of the word "dealer" as defined in the Sales Tax Act, in the Act in question, which necessarily involves a reference to the definition of the word "business" also (as defined in the Sales Tax Act), a manufacturer of any of the scheduled goods, if buys some other goods (which are also a scheduled goods) as incidental or ancillary to the main activity of manufacture, shall have to be considered as a dealer in the latter goods also. He will be dealer in the said (latter) goods and when the said goods is or are found in the Schedule to the Act, there can be no escape from the conclusion that he is a dealer in the scheduled goods. If so, the charging provision of the Act gets attracted in respect of those goods when the taxable event stated in section 3 takes place.

25. I may also refer to the decision of this Court in J.S. Auto Machine Shop Vs. State of Karnataka and Another, cited by the learned Government Pleader, in support of the contention that a person need not sell the very article purchased by him to become a dealer and dealing in a machinery, which is a scheduled goods, attracted the levy under the Act.

26. A few other contentions raised in the writ petition were not pressed in view of the settled position in law and therefore it is unnecessary to refer to them. However, Mr. Naganand contended that the petitioners had no adequate opportunity to place their several other contentions before the second respondent and they were not granted sufficient time to show cause against the proposition notice annexure "E" (dated March 1, 1988). It was also contended that the assessment order purported to bear the date March 14, 1988, was antedated to get over the interim order of stay made by this Court on March 22, 1988 and this is quite clear from the fact that the actual demand was issued only

on March 26, 1988. The learned counsel also referred to the letter written by the petitioners on March 10, 1988 in answer to the proposition notice. The petitioners had sought some more time to show cause against the notice in view of the several points involved and the need to gather information in respect of the transactions of the year 1982-83 in March, 1988. Petitioners had sought 4 weeks time. This letter, though received, was not even considered by the second respondent. Petitioners therefore assert that, on learning of the stay order made by this Court, the authority acted in haste and made the impugned assessment order arbitrarily and thereafter issued the demand.

27. It is unnecessary to probe into this allegation of antedating. Fact remains that several points involving facts are to be explained by the petitioners to show cause against the proposition notice. Notice was issued nearly 5 years after the relevant period. Naturally, petitioners require some time to gather the records and verify the transactions. In fairness, the second respondent should have granted some reasonable time to the petitioners.

28. Even assuming that assessment order has been made on March 14, 1988, issuance of demand as a consequence thereof was wholly unjustified, in the face of the interim order dated March 22, 1988, whereby this Court had stayed "further proceeding pursuant to annexure "E"" (i.e., the proposition notice). Further proceedings would include the issuance of demand notice also.

29. Since the petitioners had no adequate opportunity to show cause against the proposition notice, the assessment order and the demand issued thereafter, are liable to be set aside, as made in violation of the principles of natural justice.

30. In the result, for the reasons stated above, this petition is allowed and the impugned order and notice (annexures "J" and "H") are set aside. Petitioners are granted four weeks time from the date of the receipt of this order, to show cause against the propositions notice, which shall be considered by the second respondent and pass appropriate orders according to law, after hearing the petitioners.

31. Rule made absolute. No costs.

32. Writ petition allowed.