(2005) 10 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No''s. 25204 and 30015 of 2004

Mehata Enterprises APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 21-10-2005

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5, 6 (1A), 8 A

Citation : (2007) 7 VST 191

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.S. Angadi and Payal Angadi, for the Appellant; Niloufer Akbar, Additional Government, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar J.

1. Petitioners are registered dealers both under the provisions of the Karnataka Sales Tax Act, 1957 (for short, "the KST Act") and Central Sales Tax Act, 1956 (for short, "the CST Act"). Petitioners have questioned the legality of the Government notification dated March 31, 1997 (annexure C to the writ petition) issued u/s 8A of the KST Act granting exemption in respect of notified items under this notification for a period of one year starting from April 1, 1998 from the tax that was payable u/s 5 of the KST Act.

2. A notification of this nature though not one creating any liability and on the other hand being beneficial to the assessees, is nevertheless characterised as an arbitrary one, as one bringing about an invidious classification, discriminating between the business of intra-State and inter-State, in the sense that the petitioners are entitled to exemption of tax under KST Act while it is not so, provided under the CST Act, and therefore the notification is bad.

3. To make good the argument, submission of Sri S.S. Angadi, learned Counsel for the petitioners, is that the liability under the provisions of the CST Act in

terms of Section 8(2-A), the charging section therein, is a tax that is linked to the rate of tax under the KST Act in the respective State Act and in view of the exemption notification, issued under the KST Act, the rate of tax under KST Act becoming zero, it automatically becomes zero even under the CST Act and therefore the petitioner should have been automatically exempted in view of the provisions of Section 8(2-A) of the CST Act, but nevertheless the authorities are not conceding this position and having taken the view that the exemption notification is confined to the provisions of the KST Act alone and having denied such exemption for the petitioners'' liability under the CST Act and having subjected the petitioners to tax under the CST Act, the petitioners are compelled to file the present writ petition, praying for an interpretation of the notification in such a manner that the petitioners will become entitled to the exemption under the provisions of the CST Act also. Section 8(2-A) of the CST Act reads as under:

8. Rate of tax on sales in the course of inter-State trade or commerce.--(1)....

(2-A) Notwithstanding anything contained in Sub-section (1-A) of Section 6 or Sub-section (1) or Clause (b) of Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at the rate which is lower than four per cent, (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.--For the purpose of this sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State, if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

4. The respondents had been put on notice and are represented by Ms. Niloufer Akbar, learned Additional Government Advocate and statement of objections is also filed.

5. Submission of the learned Additional Government Advocate is that there is nothing wrong in the notification and, in fact, it is a beneficial notification for the benefit of persons like the petitioners and cannot be characterised as bad in law ; that a notification issued under the KST Act cannot come to the benefit of the petitioners for seeking exemption under the provisions of the CST Act.

6. Petitions are wholly misconceived. No one has a right to seek an exemption from the levy of tax. An exemption from the liability for payment of tax under the KST Act is confined to only such items and period and not beyond. A notification u/s 8A of the KST Act cannot be construed or interpreted in such a manner to include the liability under the CST Act also. As to what consequence follows in the CST Act because of the exemption granted is a question that can

be agitated independently by the petitioners in the appropriate proceedings and cannot be examined in these writ petitions.

7. There is absolutely no merit in these petitions. Petitions are accordingly dismissed.

