
(2016) 03 SC CK 0145
In the Supreme Court Of India
Case No : Civil Appeal No. 5899 of 2006

M/s. Asian Paints (India) Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Citation : (2016) 93 UPTC 270

Hon'ble Judges : A.K. Sikri And Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Ms. Chinmayee Chandra and Mrs. Nandini Gore, Advocate, for the Appellants; Mr. K.N. Bhat, Senior Advocate, Mr. V.N. Raghupathy, and Mr. Parikshit P. Angadi, Advocates, for the Respondents

Final Decision : Allowed

Judgement

1. The appellant herein is engaged in the business of manufacture and sale of paints and is registered as a dealer under the provisions of Karnataka Sales Tax Act, 1957 (hereinafter referred to as "KST Act"). It has been paying entry tax under the provisions of Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as "KTEG Act") as well. In relation to the sales tax assessment under the provisions of KST Act for the periods 1992-1993 and 1993-1994, the appellant had claimed that entry tax amounts collected separately from the customers in the sale bills and paid to the Government will not form part of turnover so as to be subjected to levy of sales tax under the KST Act.

2. This contention of the appellant was not accepted and the entry tax so collected by the appellant from the customers was treated as part of turnover and, on that, sales tax was also levied by the Assessing Officer. This view taken by the Assessing Officer was upheld by the High Court as well in the impugned judgment.

3. For proper understanding of the matter, we reproduce the provisions of Section 3A of the KTEG Act which reads as under: "Section 3-A. Collection of tax

by registered dealer -

(1) A person who is not a registered dealer shall not collect any amount by way of tax or purporting to be by way of tax under this Act, nor shall a registered dealer collect any amount by way of tax or purporting to be by way of tax at a rate or rates exceeding the rate or rates specified in a notification issued under Section 3.

(2) No dealer shall collect any amount by way of tax or purporting to be by way of tax in respect of the entry of any goods on which no tax is payable by him under the provisions of this Act."

4. For Appellant(s) Ms. Chinmayee Chandra, Adv. Mrs. Nandini Gore, Adv. For Respondent(s) Mr. K.N. Bhat, Sr. Adv. Mr. V. N. Raghupathy, Adv. Mr. Parikshit P. Angadi, Adv. It cannot be disputed that when a registered dealer is authorised to collect any amount by way of tax, that tax shall not form part of turnover. It has been so decided by this Court in "M/s. Anand Swarup Mahesh Kumar v. Commissioner of Sales Tax" [1980 (4) SCC 451], as is clear from the following discussion contained in the said judgment:

"13. The argument urged on behalf of the appellant is that when a dealer who in this case happens to be a commission agent is permitted by law to collect the market fee which he is liable to pay to the market committee from the purchaser, such market fee cannot form part of the consideration for sale and, therefore, cannot be included in the turnover of purchases for purposes of levy of tax under the Act. But on behalf of the State Government, it is urged that all sums paid by a purchaser to a seller or to a commission agent for the purchase of the goods including any tax or fee payable by him form the consideration for the purchase and, therefore, are liable to be included in the turnover of purchases. Reliance is placed by the State Government on M/s. George Oakes (P) Ltd. v. State of Madras" in which this Court while interpreting a similar provision in the Madras General Sales Tax Act, 1939 observed that the expression "turnover" meant the aggregate amount for which goods were bought or sold whether for cash or deferred payment or other valuable consideration and when a sale attracted purchase tax and the tax was passed on to the consumer what the buyer had to pay for the goods included the tax as well and the aggregate amount so paid would fall within the definition of turnover. In the above case, the court was construing the meaning of the expression "turnover" appearing in a statute in which there was no provision authorising the seller to recover the sales tax payable by him from the purchaser although the price of the goods realised by him included the sales tax payable by him and thus he had passed on his liability to the purchaser. The next decision on which reliance was placed by the State Government is Delhi Cloth and General Mills Co. Ltd. v. Commissioner of Sales Tax, Indore". In that case this Court held that the expression "sale price" as defined in Section 2(o) of the Madhya Pradesh General Sales Tax Act, 1958 included the sales tax collected by a dealer from his purchaser as there was no provision in that statute imposing any liability on the purchaser to pay the tax

imposed by it on the dealer and there was no law empowering the dealer to collect the tax from his buyer. In both the decisions referred to above, this Court relied upon *Paprika Ltd. v. Board of Trade and Love v. Norman Wright (Builders) Ltd.* in which it had been laid down that the price payable by a purchaser under a contract of goods for the purpose of certain penal provisions was the price fixed by the contract and a seller who wished to recover the amount of the purchase tax should, except where an adjustment was authorised by statute, include that amount in the price so fixed. From the observations made in the decisions referred to above, it follows that where a dealer is authorised by law to pass on any tax payable by him on the transaction of sale to the purchaser, such tax does not form part of the consideration for purposes of levy of tax on sales or purchases but where there is no statutory provision authorising the dealer to pass on the tax to the purchaser, such tax does form part of the consideration when he includes it in the price and realizes the same from the purchaser. The essential factor which distinguishes the former class of cases from the latter class is the existence of a statutory provision authorising a dealer to recover the tax payable on the transaction of sale from the purchaser. It is on account of the above distinction that this Court held in *Joint Commercial Officer, Division II, Madras-2 v. Spencer & Co.* that the sales tax which a seller of foreign liquor was liable to pay under Section 21A of the Madras Prohibition Act, 1937 did not form part of the turnover on which sales tax could be levied under the Madras General Sales Tax Act, 1959 because the seller was entitled to recover the sales tax payable by him from the purchaser. The relevant part of Section 21-A of the Madras Prohibition Act, 1937 referred to above reads thus:

21-A. Every person or institution which sells foreign liquor ? shall collect from the purchaser and pay over to the Government at such intervals and in such manner as may be prescribed, a sales tax calculated at the rate of eight annas in the rupee, or at such other rate as may be notified by the Government from time to time, on the price of the liquor so sold."

5. The High Court has, in the impugned judgment, in fact accepted the aforesaid principle. However, on the construction of Section 3A of the KTEG Act, it has taken a view that since this section is couched in a negative term, it does not authorise the registered dealer to collect the entry tax. This construction is clearly erroneous as the embargo is put only on such dealers which are not registered dealers, meaning thereby, those who are registered dealers are authorised to collect the entry tax. That becomes further clear from the latter portion of sub-Section (1) of Section 3A which permits the registered dealers to collect the tax but bars them from collecting the tax exceeding the rates or rates specified in a notification issued under Section 3 of the Act. In fact, we are not even required to go into this discussion in greater detail as a Seven Bench Judgment of this Court in "*R.S. Joshi etc. v. Ajit Mills Ltd. and Another etc.*" [1977 (4) SCC 98] has interpreted an identically worded provision in the manner we have suggested above. We reproduce the relevant portion of the said judgment herein below:

".....Even here we may read Section 46(1) and (2):

"46(1) No person shall collect any sum by way of tax in respect of sale of any goods on which by virtue of Section 5 no tax is payable.

(2) No person, who is not a Registered dealer and liable to pay tax in respect of any sale or purchase, shall collect on the sale of any goods any sum by way of tax from any other person and no Registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him under the provisions of this Act....."

6. Although there is no specific provision enabling the dealer to pass on the tax to the customer, there is a necessary implication in Section 46 authorising such recovery, it being optional for him to do so or not. The primary liability to pay the tax is on the dealer but it is a well-established trade practise which has received express or implied legislative cognisance, that the dealer is not prohibited from passing on the tax to the other party to the sale. Such a usage is implicit in Section 46 of the Act although what is explicit in the provision is that nothing shall be collected by way of tax in respect of sale of any goods exempted under Section 5 and no registered dealer shall exact by way of tax any sum exceeding what is payable under the Act. Of course, one who is not a registered dealer, cannot collect any sum by way of tax from any other person. In short, there is a triple taboo writ into Section 46. This prohibitory project is made operational, as stated earlier, by two other provisions, one sounding in criminal and the other in departmental proceedings."

7. In view of the aforesaid position in law, when it is found that the appellant is a registered dealer, it would entail him to collect the entry tax and such an entry tax cannot be treated as forming part of the turnover. We, thus, allow this appeal and set aside the impugned judgment. No orders as to costs.