(1999) 08 KAR CK 0018

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 35 of 1996

M/s. Vijash Enterprises, Mangalore — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 16-08-1999

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5(2), 8(1)

Citation : (1999) 47 KarLJ 564

Hon'ble Judges : T. N. Vallinayagam, J;V. K. Singhal, J

Judgement

V.K. Singhal, J.-The order of the Karnataka Appellate Tribunal dated 25-9-1995 has been assailed in this revision petition.

2. The assessment was made on 23-7-1994. Tax was levied on the turnover of Rs. 99,401.77. According to petitioner the said turnover was not liable to tax as it was claimed that the turnover was below the limit. The Assessing Authority took resort of Section 5(2) of K.S.T. Act, 1957, which provides:

"Notwithstanding anything contained in sub-section (5) of Section 5, a dealer registered under the C.S.T. Act, 1956 shall whatever be the quantum of his total turnover, be liable to pay tax at the rate specified in the Act, on the sale of any goods which he has purchased in the course of inter-State trade or commerce in respect of which the concessional rate of tax under clause (b) of sub-section (1) of Section 8 of C.S.T. Act, 1956 has been levied".

According to the assessee, all the purchases were not made against the C-Form. According to the Assessing Authority, he purchased goods against C-Form to the extent of Rs. 46,259.75 and has received goods for sale from Hindustan Wood Industries, Kerala, as well. Since, the assessee is registered under Central Sales Tax Act, and purchased the plywood against C-Form as well, the total turnover was held liable to tax irrespective of the fact that it was below the minimum prescribed under Section 5(5) of K.S.T. Act.

3. Appeal preferred also was dismissed by the Deputy Commissioner of

Commercial Taxes on 31-10-1994 and the Tribunal by its order dated 25-7-1994 held that the petitioner is liable to tax.

4. The submission of the learned Counsel for the petitioner is that the goods have been received from Kerala State and the supplier was exempted from payment of taxes in that State and that there cannot be any liability of tax in Karnataka and that the total turnover being below the limit no tax can be levied. It is submitted that the petitioner is only the agent of the Kerala dealer and as such no liability can be fixed on him.

5. We have considered over the matter. It is not in dispute that the sales were effected within the State of Karnataka as local sales and, therefore, the liability has to be determined only in accordance with the provisions of the K.S.T. Act. Under Section 5(2) of the K.S.T. Act, if the dealer is registered under C.S.T. Act, then he is liable to pay the tax in respect of the goods which he has purchased in course of inter-State trade or commerce. From the Assessment order, it is evident that the sale to the extent of Rs. 50,313.33 was in respect of those goods which were purchased against C-Form. The liability therefore being covered by the provisions of Section 5(2) of K.S.T. Act, the petitioner was liable for payment of tax irrespective of turnover.

6. In respect of the goods which were received from his Principal of Kerala, provisions of Section 9(ii) of the Act are relevant. Provisions of Section 9(ii) provides that in respect of a business of non-resident dealer, his manager or agent residing in the State of Karnataka shall be deemed to be the dealer. Under Section 9(ii) which is to the following effect, the liability is fixed irrespective of the amount of turnover;

"The manager or agent of a non-resident shall be assessed to tax under this Act at the rate or rates leviable thereunder in respect of the business of such non-resident in which the manager or agent is concerned, irrespective of the amount of the turnover of such business being less than the minimum specified in sub-section (5) of Section 5".

7. The above provision, fixes the liability on the agent of non-resident dealer and dispenses with the requirement of the minimum turnover. The sale effected by the petitioner on behalf of non-resident Principal was to the extent of Rs. 49,088.44 which was liable to tax by virtue of Section 9(ii).

8. The contention of the learned Counsel for the petitioner that the Principal was exempted in the State of Kerala has no application to the provisions of the K.S.T. Act. It may be that the exemption has been given in the State of Kerala as a new unit or for any other reason. But that may be for local sales being effected there or inter-sales made from Kerala. Kerala Legislature cannot exempt any sale which is being effected in any other State. It is the State of Karnataka only which has the competence to exempt or levy tax in respect of sales to be effected in the State. Since, the goods are not exempted and are liable to tax irrespective of the turnover, the petitioner has to bear the burden of tax. The provisions of

Section 9(i) of K.S.T. Act covers the case where the sales are being effected by the agent or manager.

9. No illegality has been committed by the Tribunal in fixing the liability on the petitioner. Accordingly, this petition is dismissed as having no force.

