(1955) 09 KAR CK 0012

In the Karnataka High Court

Case No : Civil Petition No. 111 and Writ Petition No. 39 of 1954

Mysore Spinning and Mfg. Co. Ltd. APPELLANT

Vs

State of Mysore and Another RESPONDENT

Date of Decision : 29-09-1955

Acts Referred:

Constitution of India, 1950 — Article 286 (1) (a)
Mysore Sales Tax Act, 1948 — Section 11 (2), 5

Citation : AIR 1955 Kar 148 : (1956) 7 STC 148

Hon'ble Judges : Padmanabhiah, J;Hombe Gowda, J

Bench : Division Bench

Advocate : For Commr. of Sales Tax Advocate General, For Mills V.L. Narasimha Murthy, in C.P. No. 111 of 1954, V.L. Narasimhamurthy, in W.P. No. 39 of 1954, for the Appellant; A.G., for the Respondent

Judgement

1. Civil Petition No. 111/54 and W. P. No. 39/54 are two connected cases in which the same point of law is involved and will, therefore, be covered by a single order. The petitioner in the former is the Minerva Mills Ltd. Bangalore, and in the latter, the Mysore Spinning and Manufacturing Company Ltd.

2. Civil Petition No. 111/54 relates to a sum of Rs. 130-15-5 collected by the petitioner-company as contingency deposit for sale of cotton dust and refuse for the quarter ending December 1951. It was contended by the petitioner that the cotton dust and refuse were exempt from taxation u/s 5, Mysore Sales Tax Act. The sales Tax authorities, disagreeing with that contention, insisted: on collection of tax on these items also. As the point was not free from doubt, the petitioner Mills, by way of abundant caution, collected tax on these items from their constituents and paid the same to the Sales Tax Department.

Later the sales Tax Department held that the goods referred to above were exempt from tax and thereafter the petitioner Mills applied for refund of the amount paid to the Sales Tax Department. The Department contended that once the amount was collected by the Mills, they had to pay the same to the

Department u/s 11(2) Sales Tax Act and that therefore, the Department was not liable to refund the amount. At the request of the petitioner-mills the point has been referred to this Court u/s 16 Mysore Sales Tax Act.

3. In Writ Petition No. 39/54 the petitioner-Company collected certain amounts as inter-State-sales tax for some period, and as tax contingency deposit for some other period. It has subsequently been held that tax on these items is exempt under the provisions of Article 286(1)(a) of the Constitution of India: but what the Department con tends is that since the petitioner-Company have collected the taxes, they were bound to pay the same to the Department u/s 11(2), Mysore Sales Tax Act. We are of opinion that the petitioners in both these cases have to succeed.

4. It is conceded that the petitioners in these two cases are registered dealers. Their contention is that what is made payable to the Sales Tax Department u/s 11(2). Mysore Sales Tax Act is the tax which is lawfully leviable and collected as such: in other words, their contention amounts to this, that if any amount is levied and collected contrary to the provisions of the Sales Tax Act, such amount is not payable to Government and that the Government has no right to collect the same u/s 11 (2) of the Act.

The contention urged on behalf of the State Government is that whatever may be the circumstances under which the amount is collected by the assessee. the amount once collected should be paid to the Government u/s 11(2) of the Act. It appears to us that we have to uphold the contention urged on the side of the petitioner-Mills as being sound.

5. Section 11(2) Mysore Sales Tax Act runs as follows:

''Every person who collects any amount by way of tax under this Act shall pay over to the Government within such time and in such manner as may be prescribed such collections as are in excess of the tax paid by him for the period during which the collection was made or in case he has not paid any amount for the period in question, he shall pay over to the Government all the amounts so collected by him and in default of such payment, the amounts may be recovered as if they were arrears of land revenue." The learned counsel for the petitioners has relied on a decision of the Madras High Court reported in ''1954 5 S. T. C. 382 (A)'', in support of his contention that the State Government cannot insist under the provisions of Section 11(2), Mysore Sales Tax Act upon payment of taxes not lawfully collected. In that case, their Lordships were dealing with the scope and operation of Section 8(b)(2) Madras General Sales Tax Act. That section is in ''pari materia'' with Section 11(2), Mysore Sales Tax Act. The words to be construed are identical in both these sections.

Their Lordships have held in that case that what a registered dealer is empowered to collect from purchasers u/s 8(b)(1), Madras General Sales Tax Act (corresponding to Section 11(1), Mysore Sales Tax Act) is only what is lawfully leviable as tax under the Act, and it is only such amounts that fall within the meaning of Section 8(b) (2) and are payable to Government. Their Lordships have further held that Section 8(b) (2) does not require a registered dealer to pay over to the Government collections made by him from the purchasers which are not lawful and that a registered dealer who collects tax from the purchasers under a mistaken conception of the liability of the sales to sale tax is not under an obligation to pay the same to the Government.

The principle enunciated by their Lordships in the above case, we should like to say with great respect, appears to be quite sound and consistent with the spirit underlying Section 8(b) (2) and the intention of the Legislature. The Legislature could not have intended, in enacting Section 11(2), Mysore Sales Tax Act, to make such illegal collections made by an assessee as a source of income to the State. It need hardly be stated that an assessee who makes such unlawful collections will be responsible to his constituents and liable to refund the same to them. Under these circumstances, we are inclined to answer the question formulated to us in C. P. 111/54 as follows:

Question:--Whether the sum of Rs. 130-15-5 collected by the Petitioner Company in the quarter ended December 1951 in its bills under the head ''Deposit at 3 pies per rupee on the above to cover Sales-tax subject to refund, if any'' as stated in the Revision Petition in the circumstances set out therein attract the Provision of Section 11 of the Mysore Sales-tax Act and therefore the Petitioner Company was liable to pay the said amount to the Government. If not, whether the Petitioner Company is entitled to refund of the said amount of Rs. 130-15-5 already paid by it under protest.

Answer:--The Petitioner-Mills were not liable to pay the sum of Rs. 130-15-5 to the Government, that the Government were not entitled to collect it under the provisions of Section 11 (2), Mysore Sales-tax Act and that they are liable to refund the same to the Petitioner-Mills."

So far as Writ Petition No. 39/54 is concerned, we hold that the Petitioner-Company are entitled to the writ applied for.

6. In the result, these petitions (C. P. 111/ 54 and W. P. 39/54) are allowed. We direct that in C. P. 111 of 1954 the amount collected by the respondent-Government from the Petitioner-Mills be refunded to them. In Writ Petition No. 39/54, a Writ Certiorari will issue as prayed for. As the decision in these two petitions depended upon the interpretation of certain sections of the Sales Tax Act, we direct the parties to bear their own costs.

7. Petitions allowed.

