

(1990) 10 KAR CK 0022
In the Karnataka High Court
Case No : S.T.R.P. No. 90 of 1985

S.G. Phadke and Sons

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-10-1990

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 (3), 2 (k), 23 (1), 5, 6

Citation : (1991) 1 KarLJ 196 : (1991) 81 STC 443

Hon'ble Judges : M.M. Mirdhe, J;M. Rama Jois, J

Bench : Division Bench

Advocate : B.P. Gandhi, for the Appellant; H.L. Dattu, Government Advocate, for the Respondent

Judgement

M. Rama Jois, J.—This revision petition is presented u/s 23(1) of the Karnataka Sales Tax Act, 1957, against the order of the Karnataka Appellate Tribunal dismissing its appeal against the order of the Deputy Commissioner of Commercial Taxes (Appeals), Belgaum, dismissing its appeal against the order of the Commercial Tax Officer, II Circle, Belgaum.

2. The facts of the case, in brief, are these : The petitioner is a dealer registered under the Act. The assessment year is 1979-80. During the assessment year the assessee had purchased rubber meant to be used for retreading of tyres. The purchase price of the rubber purchased during the year by the assessee was Rs. 22,200. The assessing authority made an assessment u/s 12(3) of the Act. The assessing authority found that the rubber purchased by the assessee was utilised for the retreading of the tyres of its customers. Rubber materials were purchased both from outside the State and within the State. On verification, the assessing authority found that the rubber purchased within the State was worth Rs. 22,101.85. It was also found that the purchase was from M/s. Tread Lines, Belgaum, which was an unregistered dealer. On the ground that the rubber was purchased under the circumstances under which no tax was leviable and the same was used for the purpose of retreading of tyres, i.e., otherwise than by

manufacture or sale, section 6 of the Act was attracted and, therefore, the petitioner was liable to pay tax. Accordingly, by his order dated November 15, 1980, the assessing authority imposed tax at the rate of 12 per cent on the purchase price of the rubber of Rs. 22,200. Questioning the legality of the said order, the petitioner preferred an appeal to the Deputy Commissioner of Commercial Taxes (Appeals), Belgaum.

3. In the appeal the main contention of the petitioner was that section 6 was not at all attracted to this case, for the reason that though M/s. Tread Lines, Belgaum, from whom the petitioner purchased rubber was an unregistered dealer, actually the rubber had suffered tax at his hands and, therefore, the petitioner was not liable to pay tax. This contention of the petitioner was rejected by the appellate authority on the ground that the petitioner had failed to adduce any evidence to show that the goods had suffered tax at the hands of M/s. Tread Lines, Belgaum. Accordingly, the appeal was dismissed. The petitioner took the matter in second appeal before the Karnataka Appellate Tribunal. The same ground was urged in the second appeal. The second appellate authority also rejected the contention of the petitioner that the rubber had suffered tax at the hand of M/s. Tread Lines, Belgaum, from whom the petitioner had purchased, on the ground that the petitioner had failed to prove that the rubber had suffered tax at the hands of M/s. Tread Lines, Belgaum. Aggrieved by the said order, the petitioner has presented this revision petition.

4. Sri B. P. Gandhi, learned counsel for the petitioner, urged the following two contentions :

(1) The petitioner cannot be regarded as a dealer in rubber, for the reason that the petitioner had purchased the rubber only for the purpose of retreading tyres of its customers and was not for the purpose of manufacturing or producing any other goods for sale.

(2) There was no proof that the rubber which the petitioner purchased from M/s. Tread Lines, Belgaum, had not suffered tax at the hands of the seller of the rubber to the petitioner and that the burden of proving that the rubber had not suffered tax was on the department. Both the appellate authorities had erroneously held that the burden was on the petitioner.

5. In support of the first contention, the learned counsel submitted that if only the petitioner had purchased rubber as a dealer, then only the provisions of section 6 would be attracted. He invited our attention to the word "dealer" defined in section 2(k) of the Act which states that the 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. He submitted that it cannot be said that the petitioner was doing the business of buying rubber and, therefore, he can be regarded as a dealer at all. He further submitted that if he was not a dealer, then the provisions of section 6 of the Act, which provides that

a dealer, who in the course of his business any taxable goods in the circumstances in which no tax u/s 5 is leviable, becomes liable to pay tax if he consumes such goods for the manufacture of other goods or otherwise or disposes of such goods in any manner other than by way of sale in the State. The learned counsel submitted that as the petitioner was not at all a dealer as defined in section 2(k) of the Act, he was not at all liable to pay tax.

6. Sri H. L. Dattu, learned counsel for the State, per contra contended that the petitioner does fall within the definition of the word "dealer" as defined in the Act. Elaborating his submission, he stated as follows : The business of the petitioner is retreading of tyres. It is for that purpose the petitioner has been purchasing rubber. Therefore, it is clear that the petitioner is carrying on the business of purchasing rubber without which he cannot carry on his business of tyre retreading. Therefore, if in any given assessment year, it is found that the petitioner had purchased rubber under the circumstances in which no tax was leviable and the petitioner used that rubber for the purpose of retreading of tyres, it would be a case of consuming the goods in a manner otherwise than for manufacturing other goods for sale and consequently becomes liable to pay tax u/s 6 of the Act.

7. In support of his contention, the Government Advocate relied on the judgment of the Supreme Court in Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, In the said case, the question for consideration before the Supreme Court was, whether a building contractor, who was purchasing the goods in the course of his business and consuming goods otherwise than for manufacture, of other goods but was using them, in the construction of buildings, was liable to tax u/s 7 of the Madhya Pradesh General Sales Tax Act, 1958, which is similar to section 6 of the Act. The Supreme Court held a building contractor purchasing goods and using the goods so purchased in the construction of buildings, was a dealer within the meaning of the definition in section 2(d) of the M.P. Act, which is also similar to the definition of the word "dealer" u/s 2(k) of the Act and the Supreme Court further held that the petitioner therein, who had purchased the building materials in the course of their business and utilised them in the construction of buildings was liable to tax u/s 7 of the M.P. Act. In our opinion, the above decision of the Supreme Court is a complete answer to the first contention urged by the learned counsel for the petitioner. Applying the ratio of the judgment, we reject the first contention.

8. In support of the second contention, the learned counsel for the petitioner submitted as follows : It is true that the petitioner had purchased rubber from M/s. Tread Lines, Belgaum. It may be that M/s. Tread Lines, Belgaum, was an unregistered dealer. But under the Act they were bound to pay tax and, in fact, they had paid the tax on the rubber which the petitioner had purchased from them. The burden of proving that the rubber purchased by the petitioner had not suffered tax was squarely on the department, but both the authorities proceeded on the basis that the petitioner had failed to discharge the burden of proof,

namely, that the goods had suffered tax at the hands of M/s. Tread Lines, Belgaum. Therefore, the orders of the assessing authority as well as of the two appellate authorities were erroneous and liable to be set aside.

9. In support of his contention that the ingredients for establishing the liability u/s 6 of the Act lay on the department, he relied on the judgment of this Court in *Jeevendriah v. State of Mysore* [1975] 35 STC 104 MYS, para 5. In the said case, a similar question arose, namely, as to whether the burden of proving whether the turnover in relation to the goods which attracted the provisions of section 6 of the Act lay on the department or on the assessee. It was the contention of the assessee in the said case that the burden of proving that the goods had been purchased by a dealer under the circumstances when no tax had been levied was on the department. As against this, it was contended by the department that in view of section 6-A of the Act the burden of proving that any transaction was not liable to tax was on the dealer. Malimath, J. (as he then was), rejected the contention of the State. The relevant portion of the judgment reads :

"5. Section 6-A prescribes the burden of proof. Sub-section (1) of section 6-A provides that for the purpose of assessment of tax under the Act, the burden of proving that any transaction or any turnover of a dealer is not liable to tax shall lie on such dealer. We are not concerned in this case with sub-section (2) of section 6-A. Sub section (1) of section 6-A places the burden of proving that any transaction or turnover of a dealer is not liable to tax, on such dealer. In other words, it is only in cases where tax is leviable under the relevant provisions of the Act, but the dealer claims exemption from the same in respect of certain transactions or turnover of his, that he has to establish all the circumstances entitling him to claim such exemption. But, sub-section (1) of section 6-A does not place the burden of proving the ingredients prescribed by the Act to justify levy of tax on the assessee. The burden of proving those ingredients is clearly on the taxing authority. Sri Chandrakantaraj Urs did not dispute this proposition. As the Supreme Court has in *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Travancore Rubber and Tea Company*, laid down that in all cases of tax the burden of proving the necessary ingredients laid down by law to justify taxation is upon the taxing authority, further discussion on this question has become unnecessary. The burden of establishing the ingredients of section 6 must, therefore, be held to lie on the taxing authority."

We are in respectful agreement with the view expressed in the said judgment.

10. As can be seen from the facts of this case M/s. Tread Lines, Belgaum, is a dealer in rubber. The petitioner alone had purchased rubber during one year worth Rs. 22,200. If that is the turnover of rubber at the hands of M/s. Tread Lines, Belgaum, in respect of rubber sold to a single customer, their turnover must be much more. Therefore, it is difficult to appreciate as to how M/s. Tread Lines, Belgaum, was continuing as an unregistered dealer. Whatever that may be, the fact remains that a dealer cannot avoid the liability of paying tax under the Act. The petitioner actually pleaded that the goods had suffered tax at the

hands of M/s. Tread Lines, Belgaum. The department did not adduce any evidence to prove that the goods had not suffered tax at the hands of M/s. Tread Lines, Belgaum. The authorities, however, proceeded on a wrong basis, namely, that the burden of proving that the goods had suffered tax at the hands of M/s. Tread Lines, Belgaum, lay on the petitioner. As the said basis itself is untenable, in view of the judgment of this Court in the case of Jeevendriah [1975] 35 STC 104, the orders of the appellate authorities as also that of the original authority are liable to be set aside and the matter has to be remanded to the assessing authority for making fresh assessment if the department is in a position to prove that the goods in question had not suffered tax at the hands of M/s. Tread Lines, Belgaum, from whom the petitioner had purchased the goods.

11. Accordingly, we make the followed order :

(i) The revision petition is allowed.

(ii) The assessment order made by the Commercial Tax Officer, II Circle, Belgaum,, dated November 15, 1980 (annexure C), the first appellate order of the Deputy Commissioner of Commercial Taxes (Appeals), Belgaum, dated May 25, 1981 (annexure B) and the order of the Karnataka Appellate Tribunal, Bangalore, dated October 29, 1984 (annexure A) are set aside.

(ii) The matter is remitted to the Commercial Tax Officer, II Circle, Belgaum, leaving liberty for proceeding further, in accordance with law and in the light of this light of this order.

Revision petition allowed.