(1963) 07 KAR CK 0007

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 15 of 1962

Sha Nathumal Gomaji and Co. APPELLANT

Vs

The State of Mysore RESPONDENT

Date of Decision : 30-07-1963

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 2 (b)
Mysore Sales Tax Act, 1948 — Section 5 (4)

Citation : (1963) ILR (Kar) 755 : (1964) 15 STC 29

Hon'ble Judges : K.S. Hegde, J;Ahmed Ali Khan, J

Bench : Division Bench

Advocate : H.B. Datar, for the Appellant; D.M. Chandrasekhar, Assistant Advocate-General, for the Respondent

Judgement

Hedge, J.—The only question for decision is, whether the petitioner is liable to be assessed to sales tax for the assessment year 1958-59 in respect of the purchases of "declared goods" made by him from a "registered dealer" in the State, when the same was sold to a "dealer" outside the State on consignment basis. In other words, the question is whether the petitioner can be held to be the last purchaser in respect of those goods, within the meaning of that expression found in clause (ii) of explanation I to section 5(4) of the Mysore Sales Tax Act, 1957, to be hereinafter to as the Act. In this case we are concerned with the Act as it stood on 1st January, 1959.

2. The relevant transactions took place before 31st December, 1958. Section 5(4) of the Act as it stood prior to 1st January, 1959, read thus :

"Section 5(4) - Notwithstanding anything contained in sub-section (1), a tax under this Act shall be levied in respect of the sale or purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entry of column (3) of the said Schedule, on the dealer liable to tax under this Act, on his turnover of purchases in each year relating to such goods :

Provided that no tax shall be levied in respect of the last purchase inside the State, if the said goods are intended for sale in the course of inter-State trade or commerce.

Explanation I. - The expression ''last purchase in the State'' means transaction in which a dealer registered under this Act -

(i) purchases from another such dealer goods for use by the purchaser in the manufacture of goods for sale or for use by the purchaser in the execution of any contract; or

(ii) purchases declare goods from another such dealer for sale to a dealer not registered under this Act or to a consumer in the State."

3. The primary question for decision is whether the "dealer not registered under this Act" referred to in clause (ii) of explanation I to section 5(4) should be a "dealer" as defined in section 2(k) of the Act or is it sufficient if he is a "dealer" as defined section 2(b) of the Central Sales Tax Act.

4. Section 2(k) of the Act reads :-

"In this Act, unless the context otherwise requires, -

''dealer'' means any person who carries on the business of buying, selling, supplying or distributing goods in the State of Mysore directly or otherwise, whether for cash or deferred payment or for other valuable consideration, and includes ......"

5. Admittedly, the person to whom the goods in question were sold by the petitioner were not "dealers" as defined in section 2(k) of the Act as they were not buying or selling or distributing goods in the State of Mysore directly or otherwise. Hence we have to see whether the context requires that we should give the word "dealer" a different meaning.

6. To answer that question it is necessary to refer to the history of section 5(4) of the Act. At one time there was considerable controversy as regards the true scope of Article 286 of the Constitution. That question was the subject-matter of several decisions by the Supreme Court as well as by the High Courts. There was need for unification as well as simplification of the law relating to inter-State sales. Therefore, it was thought necessary to enact the Central Sales Tax Act, 1956. Section 15 of the Central Sales Tax Act, as originally enacted, read thus :

"Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall be levied only in respect of the last sale or purchase inside the State and shall not exceed two per cent. of the sale or purchase price;

(b) notwithstanding anything contained in clause (a), no tax shall be levied in respect of the last sale or purchase inside the State if the declared goods purchased are intended for sale in the course of inter-State trade or commerce.

Explanation. - The expression ''last sale or purchase inside the State'' means the transaction in which a dealer registered under the sales tax law of the State -

(i) sells to or purchases from another such dealer declared goods for use by the purchaser in the manufacture of goods for sale or for use by the purchaser in the execution of any contract; or

(ii) purchases declared goods from another such dealer for sale to a dealer not registered under the sales tax law of the State or to a consumer in the State."

7. Section 5(4) was introduced into the Act solely with a view to carry into effect the provisions contained in section 15 of the Central Sales Tax Act. To an extent the provisions contained in section 5(4) were borrowed from section 15 of the Central Sales Tax Act. No doubt they were suitably modified. In the Central Sales Tax Act, "dealer" is defined in section 2(b) thus :

"''dealer'' means any person who carries on the business of selling goods, and includes a Government which carries on such business."

8. From the history of the legislation as well as from the context it is clear that when the Legislature used the expression "dealer not registered under this Act" in clause (ii) of explanation I of section 5(4) it used that expression "dealer" as defined in section 2(b) of the Central Sales Tax Act. It is urged by the counsel for the State that the scheme of section 5(4) was to tax the "last purchases" of all declared goods unless the same is used in inter-State trade or used for consumption in the State. There is force in this contention. But we refrain from pronouncing on the same as we have not heard full arguments on that question. We think that the Tribunal is right in holding that the petitioner is liable to tax u/s 5(4) of the Act.

9. Hence this petition fails and the same is dismissed with costs. Advocate''s fee Rs. 100.

10. Petition dismissed.