(2002) 10 KAR CK 0064

In the Karnataka High Court

Case No : S.T.R.P. No''s. 8, 17, 18, 25, 31, 32, 33, 34, 37, 38, 40, 41, 45, 46, 47 and 48 of 2002

Siddeshwara and Co. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:
Central Sales Tax Act, 1956 — Section 9 (2)
Karnataka Sales Tax Act, 1957 — Section 23 (1), 6 A (3)

Citation : (2004) 134 STC 270

Hon'ble Judges : S.B. Majage, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : S. Narayan, for the Appellant; B. Anand, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—These petitions, which have been filed u/s 23(1) of the Karnataka Sales Tax Act, 1957 (in short "the Act"), are directed against the order dated July 31, 2001 passed by the Karnataka Appellate Tribunal.

2. The petitioners are dealers in are cantus. Their place of business is situated at Bhimasamudra town in the district of Chitradurga. They are duly registered under the provisions of the KST Act as well as the Central Sales Tax Act, 1956 and they make purchases from the registered dealers as well as unregistered dealers.

3. For the assessment year in question, i.e., 1994-95, the petitioners by relying on the notification'' dated March 31, 1984, claimed exemption in respect of sales of are cantus, which they had admittedly sold in the course of inter-State trade or commerce, but the same was denied by the assessing officer and confirmed by the first appellate authority as well as the Tribunal. The reason for denial of exemption was that the stocks of are cantus, which were sold in the course of inter-State trade or commerce, had not suffered any tax under the KST Act since the three main sellers from whom the petitioners purchased are cantus were found to be bogus. Secondly, as of fact as borne out from the records, the

petitioners attempted to evade legitimate tax. Since the assessing authority having found the entire transaction of purchase of arecanut from the three registered dealers to be fraudulent, the petitioners were subjected to penalty as well u/s 9(2) of the CST Act read with Section 6A(3) of the KST Act. As could be immediately made out from the bare reading of the Tribunal''s order, before coming to a conclusion that the transactions of purchase from three alleged dealers were crude devices to defraud the Revenue, department did fool proof investigation and had given appropriate opportunity of rebuttal to the petitioners. Therefore, there is hardly any ground for this Court to intervene with the said finding.

4. Further in order to appreciate the import of the notification, on which petitioners'' counsel has placed reliance for seeking a benefit despite adverse findings recorded against them on facts, it is relevant to extract the same which reads as under :

"Notification No. FD 61 CSL 84(XV), Banglaore, dated the 31st March, 1984.

"In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) and in supersession of Notification No. FD 58 CSL 76, dated 14th September, 1977, the Government of Karnataka, being satisfied that it is necessary so to do in public interest, hereby directs that with effect from 1st day of April, 1984, no tax shall be payable under the said Act, in respect of sales in the course of inter-State trade or commerce, of ''arecanut'' provided that the arecanut so sold has already been subjected to tax under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957)."

For having benefit of the above notification, it was for the petitioners to prove that the are cantus sold in the inter-State trade or commerce had already been subjected to tax under the KST Act. As noticed above, the stocks of are cantus in question were never subjected to tax under the State Act entitling the petitioners to have benefit of exemption of tax.

5. So, in our view, on facts, the authorities and the Tribunal have properly decided the matter and we see no error of law committed by any authority or Tribunal.

In the result, the petitions are dismissed.