

(1970) 07 KAR CK 0005

In the Karnataka High Court

Case No : S.T.A. 459/68 S.T.R.P. No. 28 of 1969

Spencer and Co., Ltd.

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 30-07-1970

Acts Referred:

Mysore Sales Tax Act, 1957 — Section 18, 23 (1), 5 (3) (a)
Mysore Sales Tax Rules, 1948 — Rule 27A, 6 (4), 6 (4) (h)

Citation : (1970) 26 STC 283

Hon'ble Judges : G.K. Govinda Bhat, J;B. Venkataswami, J

Bench : Division Bench

Advocate : R.N. Narasimha Murthy, for the Appellant; S.R. Rajasekhara Murthy, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, J.—This is a revision petition u/s 23(1) of the Mysore Sales Tax Act, 1957, hereinafter called the "Act" and it is directed against the order of the Mysore Sales Tax Appellate Tribunal, Bangalore, dated 6th March, 1969, made in S.T.A. No. 459/68.

2. The short question that arises for decision in this case is whether on the facts and in the circumstances of the case, the petitioner can be said to have collected the sum of Rs. 42,839.75 by way of sales tax on sales of liquor during the period 1st July, 1963 to 30th July, 1964.

3. Messrs Spencer & Co., Ltd. is the petitioner and it has its head office at Madras and carries on its business at Bangalore, besides other cities. The petitioner is a registered dealer under the Act. It has a retail store in Mahathma Gandhi Road at Bangalore wherein it sells, among other commodities, liquor. Under the Act liquor taxable u/s 5(3)(a) at a single point on the first sale. According to the petitioner, it collects amounts by way of tax in addition to the price of the liquor and the total amount collected by way of tax during the relevant period amounted to Rs. 42,839.75. Section 5 of the Act levies tax on the taxable turnover of every dealer. Rule 6(4) of the Mysore Sales Tax Rules, 1957, hereinafter called the

"Rules" provides for determination of the taxable turnover of a dealer. Sub-rule (4) of the said rule provides that in determining the taxable turnover, the amount specified in clauses (a) to (k) shall, subject to the conditions specified therein, be deducted from the total turnover as determined under clauses (a) and (b) of sub-rule (1). Clause (h) provides for the deduction of all amounts collected by way of tax under the Act by a dealer.

4. One by the prerequisite conditions for entitling a dealer to collect any amount by way of tax is that he should be a registered dealer. That the petitioner satisfies the said condition is not disputed. The Commercial Tax Officer who is the assessing authority held, on enquiry, that in respect of retail sales of liquor, no sales tax was charged in the bills issued by the petitioner; but later on, the amount of sales tax is bifurcated in the books of accounts maintained by the petitioner and the amount in respect of which the deduction is claimed is shown separately. He also found that the goods subjected to tax at different rates were classified in the sales analysis book as required by the Act. He rejected the petitioner's claim for deduction of the aforesaid amount under rule 6(4)(h) on the ground that sales tax was not separately charged in the bills. That part of the order of the Commercial Tax Officer was upheld by the Deputy Commissioner of Commercial Taxes, Bangalore, on the appeal preferred by the petitioner. On second appeal, the Mysore Sales Tax Appellate Tribunal has also affirmed the said decision.

5. The Sales Tax Appellate Tribunal in support of its decision, purported to rely on an unreported decision of this court in *Mysore Auto Parts v. State of Mysore*, S.T.A. No. 6 of 1964 decided on 27th January, 1966, which relied on an earlier decision of this court in C.R.P. No. 1024 of 1961 (*Mysore Vegetable Oil Products v. State of Mysore* decided on 30th January, 1962).

6. It was urged by the learned counsel for the petitioner that the aforesaid decisions of this court do not lay down that if a dealer does not show in his bills separately the sales tax collected from his customers, he is not entitled to the deduction provided under rule 6(4)(h) of the Rules. We have carefully perused the said decisions; in them we do not find any support for the interpretation put by the Tribunal. In C.R.P. No. 1024 of 1961 the order, which is very brief, may usefully be set out in full. It reads :

"The petitioner is a manufacturer and dealer in vegetable oil and vanaspati. He has sold vegetable oil in sealed tins. The price quoted is all inclusive. No separate charges were collected from the buyers, either by way of tax or by way of packing charges. In his return he mentioned certain figures as representing the sales tax collected by him from his buyers. He also showed certain other figures as charges collected from the buyers for tins which were used for packing.

A dealer is entitled to deduct from his turnover "all amounts collected by way of tax under the Act" as per rule 6(5)(a) of the Rules framed under the Mysore Sales Tax Act, 1957. He is also entitled to deduct from his turnover charges for

packing and delivery under rule 6(5)(f)(ii). But in the instant case, as mentioned earlier, the petitioner had quoted and collected in all inclusive price. For the purpose of finding out what packing charges he had to incur, we have to wholly depend on his return. So far as tax collected is concerned, as mentioned earlier, it was not collected by way of tax.

In these circumstances, the Tribunals have opined that the amount realised by the petitioner is a price realised by him in respect of the goods sold by him and therefore the same is liable to be included in his turnover. This conclusion appears to us to be correct."

7. It is clear from a reading of the above decision that it was found as a fact that the dealer in the said case had quoted and collected an all inclusive price and therefore it was held, in our opinion rightly, that the dealer was not entitled to deduction of any amounts under rule 6(5)(a) as it then stood which corresponds to rule 6(4)(h) as it now stands.

8. In *Mysore Auto Parts v. State of Mysore* [S.T.A. No. 6 of 1964 decided on 27th January, 1966], the order of this court quoted in full the order of the Commissioner of Commercial Taxes against which the appeal had been preferred. The order of the Commissioner stated that "if a dealer does not collect the tax specifically in the bill, he cannot be said to have collected anything by way of tax. It is open to him to collect the sale price which may include the tax element, but the rule does not authorise the reckoning of this "tax element" for being deducted from the total turnover. It is obvious that what is deductible is only the amount charged as sales tax by the dealer in the bill." This court neither approved nor disapproved of the above statement of law made by the Commissioner in his order. What this court stated was that the facts found by the Commissioner fell within the rule laid down in C.R.P. No. 1024 of 1961 referred to earlier and repeated what it had stated in the said case that the petitioner had quoted and collected an all inclusive price and on that ground held that the dealer was not entitled to claim deduction under rule 6(5)(a) as it then existed.

9. Since there is no decision of this court laying down that a dealer is not entitled to claim deduction of any amount collected by way of tax if the said amount is not specifically charged separately in the bills of sale issued by the dealer to his customers, the matter is *res integra* and, therefore, we proceed to decide the question.

10. In *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon v. Veeriah Reddiar* [1962] 13 S.T.C. 930, a Bench of the Kerala High Court in construing a rule in *pari materia* with our rule has held that in the absence of a stipulation in the rule to the effect that the sales tax collected should be shown separately, the fact that the sales tax collected was not thus shown will not preclude the assessee from claiming deduction.

11. No decision was brought to our notice laying down that unless the sales tax amount is separately shown in the bill of sale, the dealer is not entitled to claim

deduction. The learned Government Pleader, in our opinion rightly, did not support the view of the Mysore Sales Tax Appellate Tribunal and the authorities below that, unless the sales tax is separately shown in the bills, a dealer cannot claim deduction of the amounts collected by way of sales tax. The learned Government Pleader submitted that if a dealer can establish on evidence that there was a stipulation between the vendor and vendee for the paying of sales tax in addition to the sale price, the dealer can be said to have collected the amount by way of sales tax and as such can claim deduction of the amount so collected provided that fact is established by (a) the contract of sale, (b) the invoice of sale, or (c) the cash memo. It will not be sufficient if the dealer in his account books bifurcates the sales tax from the sale price and enters the amounts separately where the bill or the contracts do not show that there is a stipulation for payment of sales tax in addition to the price of the goods.

12. Sri K. Srinivasan, learned counsel who was allowed to intervene on behalf of International Cotton Corporation (P.) Ltd., submitted that unless the dealer charges the purchaser sales tax separately, he cannot be said to have collected any amount by way of tax and that the purchaser should have notice of the price of the goods charged exclusive of sales tax. According to his submission the tax portion of the consideration of the price should be particularised as such and collected.

13. Sri T. Subba Rao was intervened on behalf of Messrs Lipton (India) Ltd., submitted that it is not necessary that the tax portion should be shown in the bills separately and it is sufficient if the dealer were to establish from the evidence that the price charged to the customer includes the sales tax and that factor is taken into consideration by the dealer in fixing the price.

14. We now proceed to examine the rival contentions. Section 5 of the Act, which is the charging section, levies tax on the taxable turnover of every dealer. Sub-section (6) of section 5 provides that for the purpose of the Act, "the total turnover, taxable turnover or turnover" shall be determined in accordance with such rules as may be prescribed. Section 2(1)(u) defines "tax" meaning as tax leviable under the provisions of the Act. Clause (u-1) defines the term "taxable turnover" to mean the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed; the term "total turnover" has been defined to mean the aggregate turnover in all goods of a dealer at all places of business in the State. The term "turnover" has been defined to mean the aggregate amount for which goods are bought or sold. Section 18 provides that a registered dealer may collect any amount by way of tax under the Act but he shall not make such collection except in accordance with such conditions and restrictions, if any, as may be prescribed.

15. Rule 6 to which reference has been made earlier provides for determination of the total and taxable turnovers of a dealer. Sub-rule (4) which provides for determination of the taxable turnover reads :

"In determining the taxable turnover, the amount specified in clauses (a) to (k) shall, subject to the conditions specified therein, be deducted from the total turnover as determined under clauses (a) and (b) of sub-rule (1).

[Clauses (a), (b), (c), (d) and (e) are omitted as unnecessary.]

(f) all amounts falling under the following two heads, when specified and charged for by the dealer separately, without including them in the price of the goods sold;

(i) freight;

(ii) charges for packing and delivery and other such like services;

[Clause (g) omitted as unnecessary.] (h) all amounts collected by way of tax under the Act by a dealer.

[Clauses (i), (j) and (k) are omitted as unnecessary.]

While clause (f) of the above sub-rule lays down the conditions subject to which the deductions could be claimed in respect of freight and charges for packing and delivery and other such like services, clause (h) does not specify any condition in order to entitle the dealer to claim deduction of all amounts collected by way of tax under the Act.

16. Section 26 provides for the manner of maintenance of accounts by the dealers. Section 27 provides that every dealer whose turnover exceeds Rs. 20,000 in any year shall, in respect of all goods sold by him issue a bill or a cash memorandum to the purchaser and shall keep the counterfoil of the bill or cash memorandum. Rule 27-A prescribes the particulars to be shown in the bill or cash memorandum. It provides that the bill shall contain the following particulars : (1) Full name and address of the selling dealer with his registration certificate number, (2) Serial number of the bill or cash memorandum and date, (3) Name and address of the buyer, if he is a dealer, and (4) Description, quantity and value of the goods. If the intention of the rule is that in order to claim deduction of the amount collected by way of tax by a dealer the sales tax amounts should be separately shown in the bill or cash memorandum, then rule 27-A would have made a specific provision to that effect. In the absence of any condition specified in sub-rule (4) of rule 6 and rule 27-A, we are unable to uphold the view taken by the Tribunal and the authorities below that the sales tax amount should be separately shown in the bill or cash memorandum in order to entitle a dealer to claim deduction under the said rule.

17. But the question still remains as to when a dealer can be said to have collected any amount by way of tax. If the dealer is able to establish that he has collected any amount by way of tax then he has a right to claim deduction of the said amount. The object of section 18 which enables a registered dealer but not an unregistered dealer to collect any amount by way of tax under the Act in accordance with such conditions and restrictions, if any, as may be prescribed, in

our opinion, is to entitle a registered dealer to claim deduction of the amounts so collected from the total turnover so that he does not suffer tax on sales tax. In the absence of rule 6(4)(h), the dealer under the Act would be liable to pay sales tax on sales tax. Therefore, provision is made by the Rules to give relief to a registered dealer under the Act for deduction of the amounts collected by way of tax in arriving at the taxable turnover.

18. The Supreme Court had occasion to consider the provisions in other Sales Tax Acts in pari materia with section 18 of the Act. In *State of Bihar v. H.R.M.L. Jute Mills* [1960] 11 S.T.C. 17, Gajendragadkar, J., as he then was, who delivered the judgment of the court stated that section 14-A of the Bihar Sales tax Act, 1947, which corresponds to section 18 of the Act consists of two parts both of which are put in a negative form and that the second part in effect means nothing more than that a registered dealer can make collections of such tax only as is payable by him in accordance with the restrictions and conditions as may be prescribed.

19. In *George Oakes (P.) Ltd. v. State of Madras and Others* [1961] 12 S.T.C. 476, which was concerned with the scope of section 8-B of the Madras General Sales Tax Act and the Madras General Sales Tax Rules which correspond to section 18 of the Act, S. K. Das, J., who delivered the judgment of the Supreme Court stated that "when the seller passes on the tax and the buyer agrees to pay sales tax in addition to the price, the tax is really part of the entire consideration and the distinction between the two amounts - tax and price - loses all significance from the point of view of legislative competence It appears to us that the true effect of section 8-B and the Turnover and Assessment Rules is that (a) a registered dealer is enabled to pass on the tax, (b) an unregistered dealer cannot do so, and (c) the amount collected by way of tax is to be shown separately, for it has to be paid over to Government." Interpreting the expression "collected by him by way of tax", the learned Judge stated that it is merely descriptive of the amounts so collected.

In *Corpus Juris Secundum*, Volume 12, pages 870-871, the expression "by way of" has been explained thus :

"By way of : It has been said that in a certain connection the phrase is idiomatic and difficult of rendition into exact phraseology, but that it may be taken to mean "as the purpose of", "in character of", "as being", which are characterised as synonymous phrases;....."

20. The clause "all amounts collected by way of tax under the Act by a dealer" in rule 6(4)(h) and section 18, in our opinion, means all amounts collected in the character of or as being tax, under the Act. The evidence concerning the transaction must show that the buyer had agreed to pay sales tax in addition to the price and the seller's account books should disclose such amounts separately. Where there is absence of such evidence, it cannot said that amounts were collected by the dealer in the character of or as being tax. Therefore, in our

judgment, a dealer can be said to have collected the amounts by way of tax under the Act where from the facts and circumstances, it can be inferred that the seller intended to pass on the tax and the buyer had agreed to pay the sales tax in addition to the price and that in the accounts of the dealer he has shown such amounts separately. If the cash memo. or the invoice separately shows the sales tax passed on to the buyer, no difficulty arises. But even in the absence of evidence furnished in the cash memos. or bills, it may be possible for a dealer to establish that he has collected the amounts by way of tax under the Act. There are dealers who publish catalogues which show the price exclusive of sales tax. The intending buyer can see from the catalogue what the price of the goods exclusive of sales tax is. If such a dealer shows a consolidated figure in the invoice or cash memo., he will be entitled to the deduction, provided in his accounts he has shown the collection separately. There are dealers who exhibit price list of articles which are open to inspection of the customers. If the price list shows the price of the goods exclusive of sales tax, it is not necessary that the bill should show the price and sales tax separately. There may be correspondence between the parties and such correspondence may show the price of the goods exclusive of sales tax. If it is possible to find out from the accounts maintained and other documentary evidence that the dealer has fixed a price exclusive of sales tax for his goods and that the cash memos. give a consolidated figure inclusive of sales tax, in such a case also, the dealer can be said to have collected the amount by way of sales tax under the Act. But if the dealer offers a price without specifically mentioning that it is exclusive of sales tax, the inference to be drawn is that the dealer does not intend to pass on the tax to the buyer and in that case he cannot claim any deduction.

21. In the instant case, the Mysore Sales Tax Appellate Tribunal and the authorities below have rejected the petitioner's claim for deduction under rule 6(4)(h) on the sole ground that the tax amount has not been shown separately in the bills. It was submitted by Sri R. N. Narasimha Murthy, petitioner's learned counsel, that the petitioner has maintained a price list showing the prices of different varieties of liquor exclusive of sales tax, the sales tax chargeable per bottle and the sum total of the price and the sales tax and that the cash memos. were prepared on the basis of the said price list. Since the Tribunal has not examined the question in the manner it ought to have been done and its decision is entirely vitiated by the erroneous view of the law it has taken, we set aside the order of the Tribunal and remit the matter back to the Tribunal to rehear the appeal and dispose of the same in the light of his order.

22. There will be an order accordingly. No costs.

23. Case remitted.