

(2004) 07 KAR CK 0021
In the Karnataka High Court
Case No : STRP No. 102 of 1999

State of Karnataka and Others

APPELLANT

Vs

Hindustan Copper Ltd. and Another

RESPONDENT

Date of Decision : 26-07-2004

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 3, 3 A, 3 A (2), 3 B

Citation : (2004) ILR (Kar) 4866 : (2004) 3 KCCR 300 SN : (2008) 11 VST 64

Hon'ble Judges : H.L. Dattu, J;A.C. Kabbin, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

H.L. Dattu, J.—The points at issue in these revision petitions are:

"Whether the Karnataka Appellate Tribunal was justified in holding that the element of entry tax separately collected and billed by the assessee could not form the sale price of the goods for the reason of same having been collected under a separate statute?

Alternatively,

"Whether the amount of entry tax collected on entry of goods into the local area before its sale to the ultimate consumer can be treated as the presale value of the goods, when the assessee has passed on the same to the ultimate purchaser adding it to the sale price of the goods.?

2. To answer the questions of law raised for consideration and decision of this Court, the facts in STRP No. 102/1999 are noticed.

3. The assessee is a Public Limited Company, a Government of Karnataka undertaking and is registered under the provisions of Karnataka Sales Tax Act, 1957 ("KST Act" for short) and Central Sales Tax Act, 1956 ("CST Act" for

short), dealing in copper, copper sulphate, etc. For the assessment year 1993-1994, the assessee had filed its annual returns, declaring its total turnover and taxable turnover and also had claimed certain exemption and deductions on the sales tax collected separately in its invoices, transactions governed under CST Act and the entry tax collected on the sale of copper and allied products, on the ground, that it had not included the same on the sale price of the goods sold as it had not collected sales tax on this component of entry tax. The assessing authority being of the view that the entry tax component forms part and parcel of the sale price of goods sold by the assessee, proposed to reject the returns filed by the assessee as incorrect and proposed to levy sales tax and turnover tax on the entry tax component collect at the appropriate rate. Accordingly, the assessing authority issued a pre-assessment notice directing the assessee to file its objections, if any, to the proposal made in the pre-assessment notice. The proposal made was objected to by the assessee - dealer by relying on the observations made by the Apex Court in the case of ANAND SWARUP MAHESH KUMAR v. COMMISSIONER OF SALES TAX .The assessing authority by his order dated 26.2.1996 while rejecting the objection of the assessee dealer has observed that the entry tax paid and collected separately in its sales invoices from the purchasers is a pre-sale expenditure and therefore, forms part and parcel of the sale price attracting sales tax under the Act.

4. The appeal filed against the aforesaid order by the assesses-dealer came to be rejected by the first appellate authority by its order dated 5.3.1997.

5. The assesses-dealer had carried the matter by way of second appeal before the Karnataka Appellate Tribunal in STA No. 427/ 1997. The Tribunal relying on the law laid down by the Apex Court in Anand Swarup Mahesh Kumar's case (1980) 46 STC 477 Kar and the observations made by this Court in KARNATAKA FOREST PLANTATION CORPORATION LIMITED v. STATE OF KARNATAKA, S.T.R.P. Nos. 16 & 17/1988 dd. on 13.3.1992 has come to the conclusion that the entry tax collected by the assessee dealer separately in its sales invoices did form part and parcel of the taxable turnover of the assessee dealer and therefore, it directed the assessing authority to reframe the assessment order for the relevant assessment year, by giving deduction to the entry tax collected by the assessee dealer from the taxable turnover.

6. The revenue being aggrieved by the aforesaid order of the Karnataka Appellate Tribunal is before this Court in this revision petition filed u/s 23(1) of the KS Act.

7. Sri Anand, learned Govt. Advocate appearing for the revenue would contend that the entry tax paid by the assessee dealer is for causing entry of goods into local area and that forms pre-sale expenditure and therefore, the Tribunal was not justified in giving a finding that the entry tax collected by the assessee - dealer in its sale invoices on the sales made by it would not form taxable turnover of the assessee - dealer. In aid of his contention, the learned Govt. Advocate relies on the law laid down by the Supreme Court in the case of Central

Wines, Hyderabad Vs. Special Commercial Tax Officer, and RAMCO CEMENT DISTRIBUTION COMPANY PVT. LTD. v. STATE OF TAMILNADU AND ORS. (1993) 88 STC 151 SC

8. Sri Sarangan, learned Senior Counsel appearing for the respondent in STA No. 102/1999 and Sri Indrakumar, learned Counsel appearing for the respondent in STA Nos. 50 and 51/ 2000 by placing heavy reliance on Section 3A of the Karnataka Entry Tax Act, submit that the dealer is authorised to collect tax as an agent of the State Government and therefore, the entry tax so collected from the purchasers would not form part and parcel of the sale price for the goods sold by the assesses-dealers. In support of this submission, the learned Senior Counsel relies on the law laid down by the Supreme Court in the case of Anand Swarup Mahesh Kumar's case - (1980) 46 STC 477 Kar and the observations made by a Division Bench of this Court in M/s. Karnataka Forest Plantation Corporation's case (STRP Nos. 16 and 17/1988 disposed of on 13th March 1992).

9. In sum and substance, the contention of the assessee - dealers in these revision petitions is that the amount of entry tax collected cannot be treated as presale value of the goods as it is a statutory liability and that the element of entry tax collected separately in the sale bills do not form sale price and that the collection of entry tax is made before the event of sale is completed.

10. Section 3 of the Karnataka Tax on Entry of Goods Act, 1979, (hereinafter for the sake of brevity referred to as "KTEG Act") is the charging Section. It authorises the levy of tax on the entry of scheduled goods into local area for consumption, use or sale therein at the rates prescribed in the notification issued by the State Government.

Section 3A of the KTEG Act provides for collection of tax by a registered dealer. In view of this Section, a person, who is not a registered dealer is statutorily prohibited from collecting any amount by way of tax or purporting to be by way of tax and a registered dealer not to collect any amount by way of tax or purporting to be by way of tax at a rate or rates not exceeding the rate or rates specified in the notification issued u/s 3 of the Act.

Sub-section (2) of Section 3A of the KTEG Act, prohibits a dealer from collecting any amount by way of tax or purporting to be by way of tax in respect of the entry of any goods on which no tax is payable under the Act.

Section 3B of the KTEG Act authorises the assessing authority under the Act to levy penalty, if any person contravenes the provisions of Section 3A of the Act.

11. Section 2 of the Karnataka Sales Tax Act, is the interpretation clause.

Clause 2(t) of the Act defines the meaning of the expression "sale" to mean every transfer of the property in goods other than by way of mortgage, hypothecation, charge, or pledge by any person to another in the course of trade or business for cash or for deferred payment or other valuable consideration.

Clause 2(u-1) of Section 2 of KST Act defines "taxable turnover" to mean the turnover on which a dealer is liable to pay tax after making such deduction from his total turnover in the manner provided under Rule 6 of KST Rules. The taxable turnover shall not include the turnover of purchase or sale in the course of interstate trade or commerce or sales made in the course of export or import of the goods in to territory of India.

12. In the present case, the assessee had deducted entry tax collected by it separately in the bills from the taxable turnover declared in its annual returns. The entry tax collected, but not included in the taxable turnover is taken exception to by the assessing authority and he has included the same in the taxable turnover of the dealer and has levied tax. The question now is, whether the assessing authority was justified in including the entry tax collected by the assessee - dealer in the taxable turnover of the dealer for the purpose of calculating tax liability of the assessee - dealer.

13. Now let us first refer to the decision on which strong reliance is placed by the learned Senior Counsel Sri Sarangan appearing for the respondent in STRP No. 102/1999 and Sri Indra Kumar, learned Counsel appearing for the respondent in STRP Nos. 50 and 51/2000. Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, , was considered and distinguished by the Constitution Bench of the Supreme Court in McDowell and Co. Ltd. Vs. Commercial Tax Officer, . In the said decision, the Court has observed that in Anand Swarup Mahesh Kumar's case, the Court was considering the liability for sales tax under the corresponding U.P. Act in respect of a dealer carrying on business at Mandi Anand Ganj, Baraut in the District of Meerut. The sales tax authorities had included in the dealer's purchase turnover "market fee" and the "commission" payable to commission agent operating within the market area for the purpose of computing sales tax. The decision turned on the definition of "turnover of purchase" in the U.P. Act and the provision of the Adhiniyam and the Rules made thereunder. "Market fee" and commission" payable to an agent are very different from excise duty and a very different position in law emerges in regard to them. No support is available from that decision in the appellant's case. We would like to point out that the relevant consideration is not whether the law permits the incidence of duty to be passed on to the purchaser, but whether there is a prohibition against the passing of it. If there is no bar. the incidence would be passed on to the purchaser in accordance with normal practice.

(emphasis is supplied by us)

14. In M/s Karnataka Forest Plantation Corporation Limited" s case (STRP Nos. 16 and 17/1988 disposed of on 13th March 1992), this Court was concerned with a situation, where a State Government or a Corporation owned or controlled by or a body notified by the State effects sale or dispose of the forest product otherwise by way of sale was required to collect tax at a particular rate on the amount of consideration paid in respect of forest product and the tax so collected was required to be paid to the State Government. The provision also mandates

that the tax shall be collected along with such consideration. While construing a provision of this nature, the Division Bench of this Court has observed:

"The forest development tax is payable to the State Government. It is also payable in respect of forest produce of by the State Government. It is unlikely in the extreme that the Statute would provide that the liability for the forest development tax, which is paid over to the State Government, should be borne by the State Government when it is itself the seller. Secondly, in express terms, the Section states that the forest development tax is to be collected along with the consideration for the sale of forest produce. It is clear, therefore, applying the test laid down in the judgments of the Supreme court aforementioned, that the forest development tax cannot be included in the turnover of the petitioner."

15. The position of law explained by the Division Bench of this Court, in our opinion, is based on the language employed in Section 98-A of the Karnataka Forest Tax Act. The Section makes it abundantly clear that the tax payable by the purchaser of forest produce and the petitioner Corporation is only obliged to collect the same for and on behalf of the State Government by virtue of Section 98-A of the Karnataka Forest Tax Act.

16. In our view, the law laid down in the aforesaid two cases is primarily based on the existence of the statutory provision giving authority to the dealer to collect the tax payable on the transaction from the purchasers. Therefore, where a dealer is authorised by law to pass on any tax payable by him on the transactions of sale to his purchasers, such tax does not form part of the sale price. But where there is no statutory provision authorizing him in that behalf, the tax does form part of the consideration when he includes it in the price and realizes the same from the purchaser.

17. Keeping these aspects in "view, let us consider the contentions canvassed by the learned Senior Counsel for the assessee - dealer. The learned Senior Counsel's primary contention is that in view of Section 3A of the KTEG Act, the assessee dealer is obliged to collect tax. In so far as this fact is concerned, there cannot be any dispute but thereafter whether this provision has any similarity with the language employed by the legislature under Karnataka Forest Act is the question that requires to be considered and decided by this Court.

The provision of Section 3A of the KTEG Act as we understand only mandates that a person who is not a registered dealer shall not collect any amount by way of tax or purporting to be way of tax under this Act. The second limb of the Section only says that a person who has registered himself as a dealer under the Act shall not collect any amount by way of tax or purporting to be by way of tax at a rate or rates not exceeding the rate or rates specified in the notification issued u/s 3 of the KTEG Act.

Sub-section (2) of Section 3 of the KTEG Act only says that the dealer is restrained from collecting any amount by way of tax or purporting to be by way of tax in respect of the entry of any goods on which no tax is payable under the

provisions of the Act.

18. The charging provision under the Act viz., Section 3 of the KTEG Act, authorises the levy of tax on the entry of scheduled goods into the local area for consumption, use or sale therein. The essential character of the charging provision is that, there should be an entry of goods into the local area for consumption, use or sale therein.

Under Section 3A of the KTEG Act, certain restrictions are placed by the Legislature on a person who is not a registered dealer under the Act. They are, firstly, a person who is not a registered dealer shall not collect any amount by way of entry tax and secondly, a registered dealer, registered under the Act shall not collect any amount by way of tax or purporting to be by way of tax at a rate or rates not exceeding the rate or rates specified in the notification issued u/s 3 of the KTEG Act. This provision is neither identical and not even similar to the provision which a Division Bench of this Court considered in the case of Karnataka Forest Plantation Corporation Limited's case (STRP Nos. 16 and 17/1988 disposed of on 13th March 1992). The Tribunal relying on the view expressed in the aforesaid decision has given relief to the dealer/assesses in the present case. In our view, the Tribunal has erroneously decided the question of law raised and canvassed before it.

19. What can be and what cannot be the component of sale price for the purpose of sales tax legislation is explained by the Supreme Court in a number of cases. In our view, it would be sufficient to refer to the law laid down by the Apex Court in the case of HINDUSTAN SUGAR MILLS LIMITED v. STATE OF RAJASTHAN (1979) 43 STC 19 SC, CENTRAL WINES v. SPECIAL COMMERCIAL TAX OFFICER and E.I.D. PARRY (I) LTD v. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES AND ANR. (2000) 117 STC 457 SC.

20. In Hindustan Sugar Mills Limited" s case, the Supreme Court has held that the sale price would include all the amounts which are payable by the purchaser for the sale of goods.

21. In CENTRAL WINES v. SPECIAL TAX OFFICER, the Supreme Court has observed.

" The sales tax component of the sale price charged by the dealer to the purchaser is not collected by him as an agent of the State. Even if, therefore, the bill or the voucher issued to the purchaser indicates the amount of sales tax separately what is collected by the dealer from the purchaser is not tax but is merely a part of the sale price charged by the dealer to the purchaser. So far as the statute is concerned, it does not cast any obligation on the purchaser of the goods to pay any tax and therefore, what is collected by the dealer from the purchaser by way of consideration for passing of the property in the goods to the purchaser is the price charged by him and not collected by him from the purchaser. The amount of money which goes from the pocket of the purchaser to the pocket of the dealer as a condition or consideration for the passing of the

property in the goods is thus the sale price and not the tax. It is the amount, but for the payment of which, the dealer would not transmit his title to the goods in favour of the purchaser, and not any amount paid by the purchaser towards any tax liability incurred by him on making the purchaser of goods. Nothing turns on whether the bill or voucher is issued to the purchaser is so made out to show that the sales tax is charged separately. The consideration obtained by the dealer from the purchaser would in the eye of the law be the sale price regardless of what nomenclature is given to a part of the price charged by him."

22. The Supreme Court in *E.I.D. PARRY (I) LTD. v. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES* (supra)- after considering the earlier decisions rendered in more or less similar context has observed:

"What transpires from the above case is that the amounts paid by way of consideration by the purchaser to the seller of goods in pursuance of the contract of sale can legitimately be regarded as purchase price while calculating the turnover for the purposes of sales tax legislation. What can legitimately be brought to sales tax or purchase tax is the aggregation of the consideration for the transfer of property.

The Court has further observed:

"Whether one of the components of the purchase price goes to the coffers of the seller or not will not cease to be so if it is necessary for completing the same. Thus the total amount of consideration for the purchase of goods would include the price strictly so called and also other amounts which are payable by the purchaser or which represent the expenses required for completing the sale as the seller would ordinarily include all of them in the price at which he would sell his goods."

23. Section 2(t) of the KST Act defines the meaning of the expression "sale" to mean every transfer of property in goods, other than by way of mortgage, hypothecation, charge or pledge by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration.

Section 2(v) read with Explanation II of the Act would define the meaning of the expression "turnover" to mean the aggregate amount for which goods are bought or sold for cash or deferred payment or valuable consideration. The amount for which goods are sold would include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof.

Section 2(u-1) of the Act defines the meaning of "taxable turnover" ascertainable after deduction from the turnover as prescribed under Rule 6 of the Rules.

Rule 6(4) of the Rules provides for determining the taxable turnover. The said Rule envisages that all amounts specified in Clauses (a) to (p) of the sub-rules subject to the conditions specified therein be deducted from the total turnover

(a) to (e) of Sub-rule (1). Apart from other permissible deductions, Rule 6(4)(h) authorises the deductions of all amounts collected by way of tax under the Act by a dealer.

24. In view of these definition clauses in the Act and the Rules, what can be inferred is, the sale price is the valuable consideration for passing of the title in the goods from the seller to the purchaser. Where a dealer is authorised by law to pass on any tax payable by him on transactions of sale to his purchasers, such tax does not form part of the sale price. But where there is no such statutory provision authorizing him in that behalf, the tax does form the part of the consideration when he includes it in the price and realizes it from the purchasers.

In the present case, Section 3(1) of the KTEG Act is the charging Section and it authorises the levy of tax on entry of goods into the local area for consumption, use or sale therein. The tax levied under Sub-section (1) shall be paid by every registered dealer or a dealer liable to get himself registered under the Act.

Section 3A of the KTEG Act imposes a restriction on the registered dealer not to collect any amount by way of tax or purporting to be by way of tax at a rate or rates not exceeding the rates specified in the notification issued u/s 3 of the KTEG Act, when the dealer causes entry of specified goods into the local area either for sale, use or consumption. The tax paid by him is for causing entry of goods into the local area. When he collects this amount from the purchasers though he may be showing it separately in the sale invoices/bills such amount of tax, is not collected by him as an agent of the State. Therefore, even if the bill or voucher issued to the purchaser indicates the amount of entry tax collected separately, what is collected by the dealer from the purchaser is not a tax but a part of the sale price charged by the dealer to the purchaser.

25. In view of the above discussions, in our opinion, the order passed by the Karnataka Appellate Tribunal cannot be sustained for the reason that it has erroneously decided the question of law raised and canvassed before it.

26. In the result, these revision petitions deserve to be allowed and accordingly they are allowed. The order passed by the Karnataka Appellate Tribunal in STA No. 427/1997 dated 30.11.1998 and in STA Nos. 220 and 221/1999 dated 25.10.1999 respectively are set aside. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.