

(1994) 03 SC CK 0069

In the Supreme Court Of India

Case No : Civil Appeal No. 1202(Nt) Of 1975

State of Karnataka

APPELLANT

Vs

C. Venkatagiriah and Brothers

RESPONDENT

Date of Decision : 29-03-1994

Acts Referred:

Citation : (1995) 2 SCC 734 Supp

Hon'ble Judges : B.P. Jeevan Reddy, J; B. L. Hansaria, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. THIS appeal is directed against an order of the High court of Mysore dismissing summarily the Sales Tax Revision Petition filed by the State.

2. IT was the common case of the parties before the tribunal that the respondent's turnover relating to gingelly and castor seeds became exigible to central Sales Tax by virtue of the insertion of Ss. (I-A) in Section 6 of the central Sales Tax Act, 1956, by (Amendment) Act 28 of 1969. By virtue of Section 10 of the said Amendment Act, however, the dealer was liable to pay the tax only where he had collected it, for the reason that the period concerned herein fell within what the tribunal called the "protected period". (The period concerned herein is from 1/4/1968 to 31/3/1969.) The burden of proving that he has not collected the tax was, however, placed upon the dealer, by the said Amendment Act. Ss. (1 and (2 of Section 10 of the said Amendment Act read thus:

"10. (1 Where any sale of goods in the course of inter-State trade or commerce has been effected during the period between the 10th day of November, 1964 and the 9th day of June, 1969 and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Act had not been

made, then, notwithstanding anything contained in Section 9 or the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Act, in respect of such sale or such part of the turnover relating to such sale. (2 For the purposes of Ss. (1, the burden of proving that no tax was collected under the principal Act in respect of any sale referred to in Ss. (1 or in respect of any portion of the turnover relating to such sale shall be on the dealer effecting such sale."

3. The only question before the tribunal was whether the respondent-dealer has discharged that burden? The bills issued by him contained an endorsement that the price charged was inclusive of tax. The tribunal held that the said endorsement is no evidence of collection of tax. It said:

"IN our view, only because it is in the bills shown "the price inclusive of tax" and in the absence of materials to show that the tax has been collected as such, we are unable to presume that the tax has been collected. In our opinion it is only when there is prima facie proof to show that the tax has been collected, then the occasion arises for the assessee to rebut the presumption that may arise in the context of the prima facie proof that the tax has been collected by him during the protective period."

4. FOR the said proposition, the tribunal relied upon a decision of the Mysore High court in *Spencer & Co. Ltd. v. State of Mysore*. The proposition enunciated in the said decision is that the dealer can be held to have collected the tax under the Act, if:

"[F]ROM 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."

(emphasis supplied) Applying the said proposition, the tribunal held that even though the bills issued by the dealer in this case did say specifically that the price charged was inclusive of tax it cannot be held that he has collected the tax. We are of the opinion that the additional requirement envisaged in *Spencer & Co. Ltd.* is not correct in law. Whether a dealer has discharged the burden that is laid upon him by the statute is a question of fact, to be decided in each case with reference to the facts and material in that case. It is not a matter of law nor can the mode of proof be reduced to a proposition of law. Ss. (2 or Ss. (1 of Section 10 of the Amendment Act do not provide for such a requirement. In such a situation, it cannot be said as a general proposition that unless the tax collected is reflected in the account books of the dealer, it cannot be said to have been collected. No such general proposition can be evolved in a matter totally within the realm of appreciation of evidence. It is up to the dealer to discharge the said burden by producing such material as he can and it is for the appropriate authority to say whether the dealer has succeeded in discharging the burden or not. In this view of the matter, we cannot agree with the tribunal's view which

has been upheld by the High court. The endorsement in the bill that the price charged is inclusive of tax is prima facie proof against the dealer's contention. Unless he produces material to displace the presumption arising from the said endorsement, he must be held to have collected the tax.

5. IT is faintly urged before us by the learned counsel for the respondent-dealer that he was not given a due opportunity to establish that he did not collect the tax and, therefore, the matter must be remanded to afford him such an opportunity. It is, however, not brought to our notice that any such grievance was made at any stage of the proceedings. In the circumstances, no such opportunity is called for.

6. WE may record that the tribunal's finding with respect to groundnut oilcake (that they are second sales and hence exempt from tax) has not been challenged before us.

7. FOR the above reason, the appeal is allowed and the orders of the High court and the tribunal are set aside (except with respect to the turnover relating to groundnut oilcake) and the order of the Deputy Commissioner of Commercial Taxes (Appeals) Bangalore dated 20/8/1970 confirming the order of the Assistant Commissioner of Commercial Taxes (Assessment) Bangalore dated 22/1/1970 (against subject to the rider that the turnover relating to groundnut oilcake shall be exempt from tax) is restored. No order as to costs.