

(1992) 07 KAR CK 0028
In the Karnataka High Court
Case No : S.T.R.P. No's. 10 to 15 of 1987

State of Karnataka

APPELLANT

Vs

Ganapathy Raman

RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12, 12 (4), 29 (1), 5 (1), 5 (3A)

Citation : (1992) 87 STC 329

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : H.L. Dattu, H.C.G.A, for the Appellant; K.S. Ramabhadran, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The State has approached this Court seeking revision of the order of the Appellate Tribunal, whereby, the Appellate Tribunal held that the respondent-dealer was not liable to any penalty u/s 5(3-B) of the Karnataka Sales Tax Act, 1957 ("the Act", for short). The assessment years covered in these revision petitions are 1977-78 to 1982-83.

2. The respondent is a dealer in synthetic resin, bearing the trade names of "Indamine" and "Indamine Super". One of the ingredients or the component part of these products is "formaldehyde". At the relevant points of time, the Act had the following provisions, which are relevant here :

"Section 5(3-A). Notwithstanding anything contained in sub-section (1) or sub-section (3), the tax payable by a dealer in respect of any sale of goods mentioned in the Second Schedule by such dealer to a registered dealer for use by the latter as component part of any other goods mentioned in that Schedule, which he intends to manufacture inside the State for sale, shall be at the rate of three per cent or the rate specified in the Second Schedule in respect of such goods whichever is lower on the turnover relating to such sale :

Provided that the provisions of this sub-section shall not apply to any sale unless

the dealer selling the goods furnishes to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority.

Explanation : For the purpose of this sub-section "component part" means an article which forms an identifiable constituent of the finished product and which along with others goes to make up the finished product."

Section 5(3-B). "If any person purchasing goods in respect of which he has made a declaration under the proviso to sub-section (3-A) fails without reasonable excuse to make use of the goods for the declared purposes the assessing authority after giving him a reasonable opportunity of being heard may, by order in writing, impose upon him by way of penalty a sum not exceeding one and half times the tax payable on the turnover relating to the sale of such goods at a rate which is equal to the rate prescribed in the Second Schedule :

Provided that no prosecution for an offence under clause (h) of sub-section (1) of section 29 shall be instituted in respect of the same facts in respect of which a penalty has been imposed under the above sub-section."

3. Form No. 37 is the prescribed form in which the declaration referred in sub-section (3-A) is to be filed. It requires the dealer to declare the purpose for which he purchases the goods in question.

4. In the instant case, while purchasing "formaldehyde", the respondent furnished form No. 37 declaring the said goods to be used in the manufacture of "synthetic resin". The fact that a declaration is furnished while furnishing an article, itself implies, that the said article is to be used as a component part of the end-product to be manufactured and the said end-product is one of the goods covered by the Second Schedule to the Act.

Therefore, when the respondent furnished the declaration at the time of the purchase of "formaldehyde", stating that this article is to be used in the manufacture of "synthetic resin" it is implicit that the respondent considered "synthetic resin" is an article falling within any of the entries in the Second Schedule.

5. The benefit of this declaration accrues to the person who sold formaldehyde to the respondent, as per section 5(3A); the seller obtains the declaration in form No. 37, from the respondent, and the seller's turnover in respect of "formaldehyde" will be at the rate stated in the said section 5(3-A).

All these years the respondent proceeded to purchase "formaldehyde" furnishing declarations under form No. 37 stating the same is to be used in the manufacture of synthetic resin. However, the respondent, in his returns filed u/s 12 of the Act, treated "synthetic resin" as a non-scheduled goods (i.e., goods not falling within any of the Schedules to the Act) and paid tax on its turnover u/s 5(1). The rate of tax u/s 5(1) being lower than the rate of tax on item 79 of the

Second Schedule, the State contends now that the respondent furnished false/ wrong declarations at the time of purchasing the "formaldehyde". According to the State, the declarations filed in form No. 37 by the respondent, by necessary implication treated "synthetic resin" as a "chemical" covered by item 79 of the Second Schedule. However, the respondent has subsequently treated them as a non-scheduled goods while filing the "returns", which means that the "formaldehyde" was not made use of, for the declared purpose.

6. The assessing authority, after issuing appropriate show cause notices, levied penalties on the respondent u/s 5(3-B). The assessing authority states in his order that although the respondent "admits that their products fall under Second Schedule of the Act, it is not specified as to under which of the entry in the Second Schedule the goods so produced by them is to be considered. Such entry is not in the Second Schedule. Hence, objections filed are rejected and penalty is levied as under treating the same as chemicals liable to tax at 10 per cent, under entry 79 of the Second Schedule to the Karnataka Sales Tax Act, 1957". The approach of the first appellate authority could be gathered from the following :

"There is no dispute as to the fact that formaldehyde is a component of resin. The only issue which is to be decided in these appeals are as to whether the appellant is right in issuing declaration in form 37 for use of said goods as component of another product which is subject to tax u/s 5(1) or not."

7. The respondent contended that section 5(3-B) cannot be urged to penalise the filing of a wrong return in respect of the end-product of which, the goods purchased under form No. 37 declaration, is a component part. The assessing authority had in fact accepted all the returns filed by the respondent; if the assessment orders were not correct, remedy for the Revenue lies elsewhere - such as rectification, reopening or revision, of the assessment orders. Similarly, section 5(3-B) is not attracted when a wrong or false declaration is filed; it is attracted only when the end-product mentioned in form No. 37, is not produced, but the ultimate goods produced is different from the one stated in the declaration.

8. The first appellate authority rejected the respondent's appeals and he observed :

"It is seen that the appellants are fully aware that they have declared the end-product, namely, "synthetic resin" as falling u/s 5(1) and in spite of such declarations in the returns as well as in the assessments, continued to issue declaration in form 37 knowing well that the benefit conferred in section 5(3-A) is available only to the components which are used in the manufacture of Scheduled goods (Second Schedule to this context). The obvious intention of the Legislature to grant the benefit to a component is to reduce the burden of tax element on the finished product in view of the fact that the end-product is liable to tax at a higher rate on a scheduled commodity."

He also observed that the respondent had committed an offence by misusing the

goods purchased "against declaration" and hence liable to pay the penalty.

9. The Appellate Tribunal, however, held that "synthetic resin" is a chemical covered by the word "chemicals of all kinds" in entry 79 of the Second Schedule and therefore the respondent had furnished correct declarations in form No. 37 and the assessing authority did not go into the correctness of the returns filed by the dealer u/s 12 and hence there was no occasion for the said authority to examine the correctness of the returns.

10. Mr. Dattu, the learned High Court Government Advocate, contended before us that "synthetic resin" (also referred as "hardener") is not a chemical at all, because, it is an end-product by itself; if so, the respondent could not have furnished declaration in form No. 37 at the time of purchasing "formaldehyde". It is pointed out that for several years, continuously, the respondent furnished such declarations while purchasing formaldehyde and at the same time, in the monthly returns filed u/s 12, the respondent treated "synthetic resin" as a non-scheduled goods; this conduct clearly shows the falsity of the declarations furnished by the respondent. The continuous process involved in the matter of purchase of "formaldehyde", the manufacture of "synthetic resin" and then the sale of the latter, and filing of the monthly returns of the sales turnover treating the end-product as a non-scheduled goods, in no way could be explained by the respondent, as an innocent mistake or a bona fide error. By this conduct, the tax leviable on the seller of the "formaldehyde" got reduced and at the same time, tax payable by the respondent on his sales turnover was also not properly assessed and paid.

11. The basic question to be considered by us, is whether on the above facts, respondent is liable to be penalised u/s 5(3-B).

While considering this question a few relevant principles are to be borne in mind. The Act is a taxing statute and its enforcement has to be strictly in terms of the language used in it. Equitable considerations and moral questions have no bearing on the enforcement of the provisions of a taxing statute, unless the clear language of any particular provision permits the introduction of these considerations. Further, penalty proceedings are normally independent of assessment proceedings; it is only under certain circumstances levy of penalty is attracted as a consequence of and incidental to the assessment orders. For example, in the cases falling u/s 12(4) and section 12-A(1-A) of the Act, penalty is leviable along with the assessment orders, as incidental to the main proceedings.

A penal provision has to be strictly construed. Its language cannot be stretched to import into the provision the supposed intendment of the Legislature.

The language of section 5(3-B) is quite clear and specific. It empowers the assessing authority to impose a penalty on a person who having purchased goods after making a declaration under sub-section (3-A), fails to make use of the goods for the declared purpose. In other words the penal provision is

attracted against a person who does not utilise the goods purchased by him for purpose declared by him. This provision has nothing to do with the filing of a wrong or false returns u/s 12 or elsewhere.

In the instant case there is no dispute that the respondent declared that the purchase of formaldehyde was for use by it as a component part of synthetic resin/hardener. There is also no dispute that the respondent has in fact used the formaldehyde (purchased under declaration in form No. 37) in the manufacture of synthetic resin/hardener. Therefore on the face of it section 5(3-B) cannot be attracted at all against the respondent.

While considering the fact situation along with section 5(3-B), the conduct of the respondent in paying the tax by treating the end-product, synthetic resin as a non-scheduled goods, is entirely irrelevant.

The law enforcing authority may have its own suspicion about the bona fide of the respondent. The conduct of the respondent if considered in its entirety may be blameworthy. But the question is whether such a conduct can be brought within section 5(3-B) at all.

It is quite possible that a dealer may actually purchase a component part of a Second Schedule goods by furnishing form 37 declaration and thereafter he may produce a Second Schedule goods. However while paying the tax on the end-product he may treat the end-product as a non-scheduled goods to enrich himself; in this process the Revenue may have suffered loss. But the medication to be applied under such a situation is not found in section 5(3-B). The Act has provided other provisions to cope up with such a situation. For example section 29(1)(h) treats filing of a false declaration u/s 5(3A), an offence. Again as per section 29(2)(d) any person who wilfully acts in contravention of any of the provisions of the Act or the Rules thereunder is liable to be penalised after due prosecution.

If the respondent had filed a false return, apart from the remedy available to the Revenue to rectify the assessments, section 29 also could be invoked to prosecute the respondent. Section 5(3-B) certainly is not attracted to the instant case.

The Appellate Tribunal has given a different finding that synthetic resin/hardener is a "chemical" falling under the Second Schedule. It is unnecessary for us to go into the said question, as we are concerned only with the question whether the respondent has used formaldehyde in the manufacture of synthetic resin/hardener, which was the declared purpose in form No. 37, furnished by the respondent at the time of the purchase of formaldehyde.

In view of the above, we do not find any reason to interfere with the order of the Appellate Tribunal. These petitions are accordingly dismissed.

12. Petition dismissed.