
(2001) 03 KAR CK 0106
In the Karnataka High Court
Case No : S.T.R.P. No. 15 of 2001

State of Karnataka

APPELLANT

Vs

Marico Industries Ltd.

RESPONDENT

Date of Decision : 26-03-2001

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 21 (2)

Citation : (2001) 4 KCCR 178 SN : (2001) 124 STC 196

Hon'ble Judges : R. Gururajan, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : B. Anand, Additional Government Advocate, for the Appellant; G. Sarangan, Senior Standing Counsel, M. Thirumalesh and G. Rabinathan, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—The State Government through the Deputy Commissioner of Commercial Taxes (Special) has preferred this petition which is directed against an appellate order of the Karnataka Appellate Tribunal, Bangalore, in S.T.A. No. 566 of 2000 dated July 21, 2000. We need to prefix this order with the observation that after the learned Government Advocate and the learned Senior Standing Counsel who represents the respondents submitted that the appeal requires to be formally admitted which is accordingly done, the two learned counsel however have advanced their arguments in extenso with regard to the narrow issue that is in controversy and having heard them, we consider it appropriate from the point of view of both the parties who are before us, that the appeal requires to be disposed of on the merits.

2. Briefly stated, the respondents Marico Industries Ltd., produce and market coconut oil in containers of various dimensions. It is their case that this oil is pure coconut oil and that it is edible oil. According to them, this oil is marketed essentially for the purpose of cooking and allied purposes, all of them coming within the broad framework of the concept of edibility. The assessing authority

after computing the relevant figures from the records produced before it for the assessment year in question which happens to be April 1, 1996 to March 31, 1997 completed the assessment on the footing that the product in question was edible coconut oil. The department through the Joint Commissioner of Commercial Taxes (Administration) then served notice on the respondents u/s 21(2) of the Karnataka Sales Tax Act, 1957, dated February 25, 2000 regarding the solitary contention that the assessment requires to be revised since it was the case of the department that the oil in question was being used as a hair oil and that consequently, it would fall under Sl. No.10 (i) of Part T of Schedule II of the Karnataka Sales Tax Act, 1957 liable to basic tax of 12 per cent surcharge, cess and turnover tax thereon. To summarise the controversy briefly, the department's contention was that the original assessment order was incorrect because it categorised the product as attracting tax at a lower rate when in fact it qualified for a higher rate of tax on the ground that it was a hair oil. The revisional authority after hearing the respondents set aside the original assessment order and totally revised it on the footing that the product in question required to be classified as hair oil. We do not propose to comment much about the revisional order apart from observing that the main ground on which the authority proceeded appears to be based on the fact that the coconut oil in question apart from being marketed in relatively large containers was also being sold in small containers of 50 and 100 ml. and even in sachets which contain enough oil for one time use. There are some references to reports that have appeared in the press, etc., but what essentially swayed the original authority was the fact that the oil which was being sold exclusively as edible oil was also being marketed in these smaller containers which according to the department were available at various dealers and outlets where edible oil is not sold but where toilet preparations such as hair oil is marketed. Practically speaking, the concept of the user test was applied and the authority drew on its knowledge that different sections of various communities use coconut oil as a hair oil and that for this reason the oil in question was being sold in a manner and through channels that left little doubt about the fact that it was intended to be used as hair oil and was in fact being done so, What we find from the revisional order is that for no ostensible reason, the revisional authority straightaway classified the entire production/sale of all the oil that was marketed by the respondents under the head of hair oil without considering the question as to whether and what percentage of the oil was being used or marketed as an hair oil or whether all of it qualified to be included under this definition.

3. The respondent appealed against the revisional order to the Tribunal and the Tribunal after hearing the parties set aside the appellate order and restored the original assessment order. The State, being aggrieved by the Tribunal's order has preferred the present petition on the ground that interference by the Tribunal in the facts and circumstances of the present case was not justified.

4. There are certain reasons why we have very briefly summarised the heads of controversy and stopped short of either indicating our views or our findings

thereof because in our considered view, the issue in question may be open to further examination on the basis of any better material which may be available. We do not propose to shut the department out from doing this nor for that matter do we propose to prejudice the assessee by making any observation because the rule of fairness and openness would preclude us from doing either of the two. The learned Government Advocate submitted that this is a case where the facts speak for themselves and it was his submission that edible oil is being marketed progressively in larger and larger containers for reasons of economics and that where one finds that the product is being sold in small containers the irresistible conclusion is that this oil is marketed in this form exclusively for the toilet/cosmetic use, in so far as a person who desires to use the oil as hair oil naturally buys it in small quantities presented in small handy containers whereas the customers who use it for cooking or edible purposes would buy it in much larger volume. We need to point out here that the learned Senior Counsel Mr. Sarangan represents the respondents intervened at this stage on the ground that he desires to put forward a factual clarification and he submitted that there are instances when the oil is required by the user in relatively small or limited quantities and that is the reason why it is also made available in small containers and he went on to demonstrate that this particular oil is required to be used in an absolutely fresh form that once the container is opened retaining it for any period of time is contra indicated because of the possible staleness and rancidity. This according to him is the reason why the respondents market the oil in the small container also.

5. At this stage, the respondent's learned counsel also produced before us three other small containers in support of his contention that the very oil, namely, Parachute brand coconut oil is in fact produced and marketed as a hair oil by some of the other subsidiary concerns and he used this circumstance as an argument in support of his contention that those of the persons who desire to use this coconut oil as a hair oil would opt to buy that product and would not use the edible oil as a hair oil. We say nothing about the factual position because the learned Government Advocate reiterated that the oil marketed as hair oil is far more expensive for a variety of reasons and that this is the reason why the oil that is marketed by the present respondents as edible oil is still being largely used as hair oil. This really represents the essence of the dispute between the parties and the learned Government Advocate proceeded to submit that the grounds on which the Tribunal has interfered with the appellate order are thoroughly unjustified and he therefore called for interference from this Court.

6. All that we need to observe here is that we have very carefully reconsidered the orders in question particularly the notice dated February 25, 2000, issued by the Joint Commissioner of Commercial Taxes at the time when he proposed to revise the original assessment order. The reason for this is because it is the requirement of law that only if it is self-evident and apparent from the record that the assessment order is erroneous either on facts or in law or if the assessment order is perverse in so far as it has drawn conclusions which no

authority should have been done or if it has ignored various significant facts of the record or the law that a revision would be justified. The notice does cryptically state that the original assessment order is legally incorrect, etc., but apart from bald allegations that the oil is used as a hair oil there is no supporting material or charge against the assessee in this notice. We refer to this aspect of the case because either the revisional authority must set out briefly the heads of the charge that emerge under the head of error, etc., vis-a-vis the assessment order or more importantly it is mere expedient and convenient to record the material that would justify the revision. In this context, what we need to also reiterate is the fact that the Tribunal in its order has referred to the following three decisions ;

(i) *Kumbla Krishna Anatha Prabhu v. State of Mysore* (1967) KLJ (Tri Supp) 91 (HC)(DB).

(ii) *Rajendra Singh v. Superintendent of Taxes* [1990] 79 STC 10 (Guw.).

(iii) *A.K. Corporation v. State of Uttar Pradesh* [1995] 96 STC 31 (All.)

The reason for doing this is because the Tribunal was conscious of the fact that the revisional authority is not permitted to draw on extraneous material or on a material other than that which is already on record for obvious reasons and on a review of the records of this case the Tribunal came to the conclusion that for the assessment year in question, apart from mere charges/allegations that there was really no concrete evidence or material with the department which justified the revision in question.

7. This is an aspect of the law that requires some consideration. The learned Government Advocate very vehemently submitted that assuming without admitting that the appellate authority should not have categorised the entire production or sale of the respondent as answering to the definition of hair oil and that the segregation process should probably have been more appropriate whereby it could easily have been ascertained as to how much of the oil is effectively marketed or sold for use as hair oil, his submission was that merely because of this minor error the respondents should not be allowed to get away from the requirement of paying higher tax on that part of their sales. From this point of view, his submission was that the court should remand the case and afford the department an opportunity of completing this process after confronting the respondents with whatever heads of charge or material the department proposes to rely on. This has been opposed by the respondent's learned counsel and perhaps rightly so as far as the present assessment order is concerned. What Mr. Sarangan, submitted was that quite apart from the mere allegation and reliance on press reports and complaints possibly from rivals or interested quarters there is no material evidence in the possession of the department which emerges from the record that would justify a re-opening of the entire process that has reached a stage of finality. As indicated by us earlier, since the department maintains that at least some part of the sales qualifies for higher tax

because it is used as a hair oil that issue should be kept open and if the department is able to justify this concept that as far as that part of the sales are concerned, the higher rate of tax even for this assessment year may be justifiable. We need however to go by the well-defined and well-settled principles of law in all taxation statutes, for the obvious reason that if as a result of postponement of consideration to a later point of time, reopening or reassessment becomes necessary, the consequences are extremely harsh to the assessee for the simple reason that the period of time has already elapsed and subsequent or later revision in the rate of taxation invariably becomes oppressive. The law however does permit such a procedure, but only in special cases, and that exception would not apply to the facts of the present case. We are here concerned under the Karnataka Sales Tax Act with a simple question as to whether the revision in question was justified for the year in question and on this record, whether at this point of time on the basis of arguments advanced at a stage long after the proceeding has been even disposed of by the Tribunal a remand would be either desirable or for that matter permissible. We do not propose to lay down any inflexible principle but all that we need to point out is that the general rule of finality would bar a remand in the present case on the additional ground that is on record now limiting the issue to the present assessment year in question with which we are concerned, that the department does not have any concrete supportive evidence or material that would justify its stand. It is in this background that we have refused the vehement submission put forward by the learned Government Advocate that the case be remanded so that at least the segregation process could be completed.

8. We however need to clarify that the observation made in this order naturally hold good only as far as the present assessment" years are concerned and that they shall have no bearing on either of the parties as far as any other period is concerned. This means that if the department can justify its stand for any subsequent period it is free to do so and the assesseees are equally entitled to substantiate their position if they so desire. Learned Government Advocate did express his apprehension that since the High Court has refused to interfere as far as the present assessment order goes this view would have its own fallout on other proceedings. In our considered view, this apprehension is really unfounded because it is well-settled law that each assessment order is required to be considered both factually and legally on the basis of independent material evidence and figures applicable to that party at the point of time and the law as it stands at that point of time. However, in order to avoid any misapprehensions we need to clarify again that the observations and decisions that have emerged in this order will have absolutely no bearing on the course of action that is to be followed or the orders that are to be passed for the subsequent assessment years.

9. For the reasons indicated by us, having considered the records of the present petition we are of the view that no interference is called for as far as the impugned order passed by the Tribunal is concerned. The petition accordingly

fails and stands disposed of on the merits. In the circumstances there shall be no order as to costs.