(1982) 05 KAPT CK 0002

In the Karnataka Appellate Tribunal

Case No : PR No. 635/81 & PR 604/81

State of Karnataka APPELLANT

Vs

Modren Rice Mills and Another RESPONDENT

Date of Decision : 28-05-1982

Acts Referred:

Karnataka Appellate Tribunal Rules, 1979 — Rule 9
Karnataka Court Fees and Suits Valuation Act, 1958 — Section 78(2)(A)

Citation : (1982) 1 KarLJ 78

Hon'ble Judges : K. Venugopal Rao, Member;B. Rajeeva Hegde, J

Judgement

Per K. Venugopal Rao, M.-The office of the Karnataka Appellate Tribunal has pointed out that these two appeals filed by the State under the Karnataka Sales Tax Act, 1957 are defective as the process fee prescribed under rule 9 of the Karnataka Appellate Tribunal Rules 1979 has not been paid. But the State has contended that it is not required to pay any process fee. Thus, the question for consideration is whether the State is required to pay process fee when it files an appeal under the Karnataka Sales Tax Act, 1957.

2. The contention on behalf of the State is that S. 78(2)(a) of the Mysore Court Fees and Suits Valuation Act, 1958 provides for the levy of process fee by the Mysore Revenue Appellate Tribunal only-and not by the Sales Tax Appellate Tribunal; that accordingly, prior to the constitution of the Karnataka Appellate Tribunal, the Karnataka Revenue Appellate Tribunal alone was levying process fee and not the Sales Tax Appellate Tribunal; that under S. 5 of the Karnataka Appellate Tribunal Act, 1976, the Karnataka Appellate Tribunal has all the powers that the Sales Tax Appellate Tribunal had and, as the latter did not have the power to levy process fee, the former also cannot levy it in respect of Sales Tax cases; and that consequently, rule 9 of the Karnataka Appellate Tribunal Rules 1979 prescribing the payment of process fee has to be read as applicable to cases under the Karnataka Land Revenue Act, 1964 only.

3. We have carefully considered the arguments advanced in this regard by Sri

B.S. Thyagaraju, the learned State Representative. For the reasons stated below we are unable to uphold his contentions.

4. In the first place, rule 9 of the Karnataka Appellate Tribunal Rules 1979 lays down that "in respect of process to be issued from the Tribunal the fee shall be payable by the party at whose instance such process is to be served". It does not make any distinction between revenue cases and sales tax cases. There is nothing in it to suggest, even remotely, that it is not applicable to sales tax cases.

5. Besides, S. 5(1) of the Karnataka Appellate Tribunal-Act, 1976, reads as follows:

"The Tribunal shall have allthe powers which the Karnataka Sales Tax Appellate Tribunal, the Karnataka Co-operative Appellate Tribunal and the Karnataka Revenue Appellate Tribunal had immediately before the commencement of this Act under the Karnataka Sales Tax Act, 1957, the Karnataka Co-oper- ative Societies Act, 1959 and the Karnataka Land Revenue Act 1964 or under any other law. Any reference in any law to the said Tribunals shall be construed as a reference to the Tribunal constituted under this Act. (underlining italics ours)"

It is clear from it that the Karnataka Appellate Tribunal has been given all the powers which all the three erstwhile Tribunals had, immediately before the commencement of the Act. The powers so conferred are not only under the three enactments referred to therein but also under any other law. Admittedly, one of the erstwhile Tribunals, namely, the Revenue Appellate Tribunal, was validly levying process fee immediately before the commencement of the Act. It therefore follows that levy of process fee by the newly constituted Tribunal also is valid.

6. No doubt S. 78(2)(a) of the Mysore Court Fees and Suits Valuation Act, 1958 provides for the levy of process fee by the Mysore Revenue Appellate Tribunal only. But, according to S. 5(1) of the Karnataka Appellate Tribunal Act, 1976, any reference in any law to the erstwhile Tribunals shall be construed as a reference to the Tribunal constituted under that Act. Consequently, the reference to the Revenue Appellate Tribunal in S. 78(2)(a) of the Court Fees and Suits Valuation Act, 1958, has to be construed as referring to the newly constituted Tribunal. And therefore it has to be held that the Court Fees and Suits Valuation Act, 1958, also specifically authorises the levy. Even, otherwise by the passing of the Karnataka Appellate Tribunal Act, 1976, the previous Act of Court Fees and Suits Valuation Act was impliedly repealed and thereby under Karnataka Appellate Tribunal Act, this Tribunal derived the power of levying process fee.

7. Thus, viewed from any angle, the levy is valid and is applicable to all cases in respect of which process is to be issued from the Tribunal. In the face of these facts, we find ourselves unable to uphold the contention that rule 9 prescribing the levy of process fee should be held as applicable to cases under the Karnataka Land Revenue Act, 1964 only. In the result, we hold that process fee is liable to be paid in these cases by the State in accordance-with Rule 9 of the Karnataka

Appellate Tribunal Rules 1979.

1982 (1) Kar.L.J.80

Karnataka Sales Tax Act (25 of 1957), S. 28A(2) - Carrying delivery note - Requirements and Form.

Karnataka Sales Tax Rule, 1957, R. 23B(1A) - Scope of.

S. 28A(2) of the Sales Tax Act does not say that the delivery note must be in the prescribed form, and much less that such form should be obtained from the assessing authority. All that it says is that the delivery note shall contain such particulars as may be prescribed.

It is only R. 23B(1A) which says that the delivery note shall be in form 39 obtained from the assessing authority. That Rule applies only to dealers registered with the concerned assessing authorities.

Therefore, it may not be just and reasonable to read the whole of R. 23B(1A) into S. 28A. Only the particulars that are prescribed by the Rules can be read into S. 28A and not the form prescribed, as S. 28A applies to all persons carrying goods irrespective of their being dealers registered or not.

A person who contravenes the Rule cannot be punished for contravention of the main provisions in the Sales Tax Act.

Thus, a self made delivery challan not obtained from the assessing officer will comply with the requirements of S. 28A(2) read with R. 23B(1A) of the K.S.T. Rules, provided it contains all the particulars in Form 39.

If the goods are transported in pursuance of a sale, the consignor should mention in the delivery note not only the name and address of the buyer and his registration certificate number, but also the bill number and the date relating to the sale. This is one of the essential particulars which a consignor should mention in the delivery note, so that any officer who checks the goods is able to find out when the goods are sold and to whom.

A delivery note which does not give the essential particulars cannot be said to be one which answers the requirements of S. 28A(2) of the Act.

