
(2012) 09 KAR CK 0093
In the Karnataka High Court
Case No : S.T.R.P. No. 91 of 2009 (Tax)

State of Karnataka

APPELLANT

Vs

M/s. Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 18(1)(b), 18-AA

Citation : (2013) ILR (Kar) 2081 : (2013) 76 KarLJ 202

Hon'ble Judges : K. Sreedhar Rao, J;B.Manohar, J

Bench : Division Bench

Advocate : S. Sujatha, AGA, for the Appellant; M. Thirumalesh, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—The respondent-assessee dealer in petroleum products and had purchased the petroleum products from Mangalore Refineries which according to the sales tax law has existed then constitute the first sale. The assessee sold the petroleum products to the dealers, which constitutes the second sale. The assessee had collected the price higher than the purchase price paid to Mangalore Refineries. It is the contention of the petitioner that in the sale invoices, the assessee had collected the excess amount of Rs. 6 crores and odd which is the difference between the purchase price and the sale price. It is the contention of the Department that the difference amount of Rs. 6 crores and odd collected is the excess sales tax. Therefore, the Assessing officer u/s 18-AA of the Sales Tax Act initiated proceedings for forfeiting the excess sales tax collected.

2. Per contra, the assessee contended that it would procure the petroleum products from outside the State for distribution within the State and so also some quantity is purchased from Mangalore Refineries within the State and sold within the State. There would be a price variation between the petroleum products imported from outside the State and procured inside the State. The

petroleum products procured inside the State will have a lesser price value. The Central Government has issued instructions to the petroleum product dealers that price parity should be maintained and the products imported from outside and procured in the State have to be sold at the same price. The benefit of difference in price should be remitted to the oil pool account of the Government of India. The assessee submits that he has not retained any part of the amount so excess collected and he has remitted to the Government of India. The assessee stoutly denies the said collection is an excess sales tax.

3. The Assessing Officer rejected the contention and held that the amount collected is an excess sales tax and passed the order of forfeiture. The Joint Commissioner in appeal confirmed the said order. The Appellate Tribunal set aside the order and held that the collection does not amount to an excess sales tax collection and that provisions of Section 18-AA of the Act does not attract to the facts of the case. The State aggrieved by the said order has filed the present appeal.

4. The following questions of law have been framed in the memorandum of petition are as follows:-

(a) Whether, on the facts and in circumstances of the case, can it be held that the order dated 21.11.2008 passed by the Karnataka Appellate Tribunal in STA 1197/2003 is correct and in accordance with law?

(b) Whether on the facts and circumstances of the case, can it be held that the Appellate Tribunal was right in its interpretation of S. 18(1)(b) of the KST Act to hold that for the purposes of attracting S. 18-AA, the relevant amount of tax should have been expressly collected as tax in the concerned invoices?

(c) Whether on the facts and in circumstances of the case, can it be held that the Appellate Tribunal was right in relying on the decision of the Apex Court reported in Azimunissa and Others Vs. The Deputy Custodian, Evacuee Properties, District Deoria and Others, in its interpretation of the term "purporting to be by way of tax" as stated in S. 18(1)(b) of the KST Act?

5. Learned AGA for the petitioner relying upon the decision of the Supreme Court in T. Stanes & Co. Ltd. vs. State of Tamil Nadu and another (2005 STC Vol. 141 Page 227) contended that any amount collected in excess under whatever guise, amounts to excess collection of tax and liable for forfeiture. Learned AGA referred to the observations made by the Assessing Officer in his forfeiture order, wherein the following observations are made:-

Further, the assessee in the statements dated 31-3-97 and 30-6-97 details of which are mentioned above, has admitted that it had charged and collected tax on the second sales of petroleum products like HSD, SKO and LPG in excess of what it had paid on corresponding purchase effected from M/s. Mangalore Refineries and Petrochemicals Ltd., Mangalore.

In view of the above admission, it is not permissible for the assessee now to

contend that the amount collected is not by way of excess second sales tax which is illegal.

6. Counsel for the assessee per contra submitted that the amount collected is as per the notification of the Central Government. The excess price whatever collected for the petroleum product procured in the State and sold has to be remitted to the Central Government. Accordingly, they have carried out the legal obligation and the amount collected is not by way of tax and any part of the amount so collected is retained by the assessee. Counsel relied upon the decision of the Kerala High Court in Hindustan Petroleum Corporation Ltd. Vs. State of Kerala and Others, It is submitted that in the cited case also, the excess amount collected by way of sale price was remitted to the oil pool account in accordance with the directives of the Central Government.

7. The provisions of Section 18-AA of the Karnataka Sales Tax Act, 1957 are reproduced for convenient reference:-

18-AA. Payment and disbursement of amounts wrongly collected by dealer as tax.-(1) Where any amount is collected by way of tax or purporting to be by way of tax from any person by any dealer in contravention of Section 18, whether knowingly or not, such dealer shall pay the entire amount so collected, to the assessing authority within twenty days after the close of the month in which such amount was collected, notwithstanding that the dealer is not liable to pay such amount as tax or that only a part of it is due from him as tax under this Act.

The above provisions empowers the authorities to forfeit the amount which is wrongly collected as a tax.

8. In the instant case, on stern consideration of the materials on record, the amount collected by the assessee does not appear to constitute excess sales tax collection. The assessee has shown that as per the directives of the Central Government they had to maintain the price parity in respect of petroleum products procured from outside and sold in the State and procured in the State and sold in the State. The price difference gained by the assessee by selling the petroleum products procured in the State and sold in the State is directed to be remitted to the oil pool account. The assessee in compliance of the said directives has collected and remitted the amount and has not retained any part of the amount. The tribunal has rightly appreciated these facts and has come to the conclusion that collection of excess amount represents price difference which is in accordance with the directives of the Central Government and the same has been remitted. In this view of the matter, it is untenable for the petitioner to contend the price difference amounts to a camouflage excess sales tax collection. Hence, the questions of law framed are answered against the revenue.

Petition is dismissed.