(1981) 09 KAPT CK 0017

In the Karnataka Appellate Tribunal

Case No : S.T.A. 825/80

Suragimath, S.V. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 24-09-1981

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 18

Citation : (1981) 1 KarLJ 169

Hon'ble Judges : B. B. Naik, Member;S. R. Puranik, J

Judgement

B.B. Naik, M.-The appellant has filed this appeal against the order of the Deputy Commissioner of Commercial Taxes (Appeals), Hubli passed under KST AP 4/80-81 dated 1-10-80 for the year 6-11-1972 to 26-10-1973 dismissing the appeal.

2. The facts of the case are that the Commercial Tax Officer, Haveri had levied the penalty of Rs. 3,563-37 under Section 18A of Karnataka Sales Tax Act, 1957 as the appellant had unauthorisedly collected the sales tax on the sales of foodgrains of Rs. 2,37,558-00 made on behalf of the ryots who are not liable to pay the tax. As the transactions were not liable to tax, the collection made by the appellant by way of tax on such sales was ordered to be recovered by way of penalty under section 18A. The appeal filed against that order was not successful.

3. Sri B.V. Katageri, the learned advocate represented the case and argued that the proceedings under section 18A were initiated at the time of assesment but they were dropped in view of the judgment reported in V.B. Patil v. C.T.O. (1970) 1 Mys L.J. 447. The law relating to section 18A has been amended with effect from 1-9-1978 and this amended law was reported in the year 1977 in 42 S.T.C. 403 (Statute). After the amendment of the section the authority has initiated the proceedings under section 18A. The lower authorities have wrongly applied the decision of the Supreme Court reported in 42 S.T.C. 4972. He further contended that the action is barred by limitation since the proceedings have not been initiated within the period of 5 years. The appellant has not committed any

offence punishable under section 18A as it was prior to 1-9-1978 (unamended). The amended provisions of section 18A have come into force from 1-9-1978 only and this provision was prospective and not retrospective and cited the decision of this Tribunal in the case of Munvalli S.V. v. State of Karnataka, 1981 KLJ Tri 10 in which it was held that the amended provisions of section 18 and 18A are effective only from 1-9-1978 and not retrospective. He has also cited the decision of the Karnataka High Court in the case of State of Mysore Vs. S.S. Dhondsi & Co,4 and contended that the amendment to section 18(1) of Mysore Sales Tax Act, 1957 which came into force on 1-4-1966 has not made any difference in the position of law as laid down by the High Court in V.B. Patil v. C.T.O., (1970) 1 Mys L.J. 447 Therefore he pleads that the orders of the lower authorities should be set aside.

4. Sri Boregowda, the learned State Representative contended that the decision of the Supreme Court in the case of R.S. Joshi, Sales Tax Officer Gujarat v. Azit Mills Ltd., 42 STC 497, is applicable to this case and contended that the sum collected by the dealer by way of sales tax but are not exigible under the State Law and prohibited by it should be forfeited to the public exchequer punitively. Therefore the penalty levied by the assessing authority was correct. He cites another decision in the case of Pavandutt Supply & Co. v. State of Karnataka, 1978 KLJ Tri 9 decided by this Tribunal in which it was held that collection of tax by a dealer whose turnover is less than Rs. 25,000 is in contravention of section 18(1) of the Act and the dealer is liable for penalty under section 18A. He further contended that the proceedings were initiated within a period of 5 years but they were temporarily halted by dropping the proceedings and they were taken up again and the penalty was levied. Therefore the orders of the lower authorities should be confirmed. Section 18 of Karnataka Sales Tax Act as it stood prior to 1-9-78 reads as follows:

"No person (whose total turnover in in any year is less than Rs. 25,000) shall collect any amount by way of tax (or purporting to be by way of tax) under this Act nor shall a registered dealer make any such collection except in accordance with conditions and restrictions, if any, as may be prescribed:

Provided that the amount which may be collected by way of tax shall not exceed the rate or rates of tax specified in respect of the sale or purchase of goods under this Act."

Section 18A prior to 1-9-1978 reads as follows:

''If any person collects any amount by way of tax or purporting to be by way of tax in contravention of the provisions of sub-section (1) or subsection (2) of Section 18, or if any registered dealer or licensed dealer collects any amount by way of tax or purporting to be by way of tax in excess of the amount payable by him, whether or not any tax is due from such person or dealer under this Act in respect of the transaction in which he collects such amount, the assessing authority may, impose upon him by way of penalty a sum not exceeding 11/2 times such amount:

Provided that no proceedings under this section shall be commenced after a period of 5 years from the expiry of the year in which the amount has been collected.."

The Karnataka High Court in the case of V.B. Patil Vs. C.T.O. Haveri, (1970) 1 Mys L.J. 447, has held that where the sales of chillies by the petitioner as commission agent of grower principals were not exigible to tax under the Act as sales of agricultural produce, the collection of tax by the petitioner from the purchasers on such sale transactions fell outside the scope of section 18 and there was no contravention of that section. Therefore the sales tax authorities had no jurisdiction to impose the penalty on the petitioner under section 18A. After this decision the Karnataka Sales Tax Act was amended by Act No. 7/66 which was in force upto 1-9-1978. It was held by the Karnataka High Court in the case of State of Mysore vs. S.S. Dhondsi & Co.,4 that the amended Act which came into force from 1-4-1966 had not made any difference in the position of law as laid down by the High Court in the case of V.B. Patil vs. C.T.O., 25 STC 449. Therefore this decision of the Karnataka High Court was applicable upto 1-9-1978 until section 18 and 18A were amended by Act No. 18/78 which came into effect from 1-9-1978. Amended Sections 18 and 18A were prospective but not retrospective as held by this Tribunal as stated by the learned advocate reported in 1981 K.L.J. 10. In the case on hand the appellant has collected the sales tax on the transactions of foodgrains sold on behalf of agricultural principals on whose transactions no sales tax could be levied. When those transactions are not exigible to sales tax, even though the tax was collected, no penalty could be levied under Sec. 18A as there was no contravention of section 18. Therefore the penalty levied by the assessing authority and confirmed by the first appellate authority is not correct. The decision cited by the learned State Representative in the case of R.S. Joshi, Sales Tax Officer, Gujarat Vs. Azit Mills, 35 STC 44 is not applicable as there was a clear prohibition under section 46(1) of Bombay Sales Tax Act, that no person shall collect any sum by way of tax in respect of sales of any goods on which by virtue of section 5 no tax is payable. But such a provision is not found under unamended Section 18 of Karnataka Sales Tax Act, 1957. Therefore this decision is not applicable. The second decision cited by the learned State Representative in 1978 K.L.J. 9 is also not applicable as it deals with the dealers whose turnover is less than Rs. 25,000/-, which is a clear contravention of section 18(1). But in the case on hand the appellant has not contravened the provisions of section 18(1). Therefore the orders of the lower authorities are set aside and the appeal is allowed. The institution fee shall be refunded.