(1981) 07 KAPT CK 0032

In the Karnataka Appellate Tribunal

Case No : STA. 499/80

Suresh Traders APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 20-07-1981

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 6

Citation : (1981) 1 KarLJ 147

Hon'ble Judges : T. Balachandran, Member;C. K. Mallikarjuna, J

Judgement

T. Balachandran, M.-This second appeal has arisen from from the order passed by the Deputy Commissioner of Commercial Taxes (Appeals) Bangalore City Division, Bangalore, dismissing the plea for the relief claimed for exemption from tax on the purchase turnover of groundnuts of Rs. 35,625-00 for the calendar year 1977 under the Karnataka Sales Tax Act, 1957, (hereinafter called the Act) in his order AP. Nos. 41, 42 & 43/80-81 dated 8th July, 1980. The Commercial Tax Officer, V Circle, Bangalore in his assessment order dated 2-4-1980 passed under the Act, proposed levy of tax on the purchase turnover of groundnut seeds worth Rs. 67,915-00 from local dealers as the assessee had not produced any proof of payment of tax by the first purchaser in the State. Later the assessee produced form 32 for purchases of groundnut seeds worth Rs. 32,300-00 effected from Lakshmi Venkateswara Traders, Pathpalya. However no form 32 was produced for the purchases effected from Lakshmi Venkateswara Industries, Siddapura for Rs. 35,625-00 except an invoice issued by them which was not considered as a satisfactory proof by the assessing authority. Hence he levied tax on that turnover under S. 5(4) of the Act. The learned Deputy Commissioner of Commercial Taxes in his appeal order observed that "merely because the purchase amount shown in the invoice is inclusive of tax, it does not establish the fact that the appellant is a subsequent purchaser in the State. Further it does not establish the fact whether the seller has sold the groundnut to the appellant either of the locally purchased groundnut or out of the Inter-State purchases of groundnut. In the absence of form 32 or alternative evidence produced by the appellant, the assessing authority is justified to levy purchase tax". Thus the first appellate authority dismissed the appeal. Hence the present appeal.

2. Sri T.H. Hanumantharayappa, the learned Sales Tax Practitioner appearing for the appellant argued that the lower authorities should have accepted the invoice produced by the appellant and admitted the claim of the appellant. for exemption from tax on a turnover of Rs. 35,625-00 when the vendor is a registered dealer. He relied upon a decision of the High Court of Karnataka in Sha Pannalal Premraj & Company v. Commercial Tax Officer, Hassan, (1975) 35 STC. 109 and submitted that when the invoice is produced showing that tax is included in the value of the goods, the responsibility of the appellant is discharged under S. 6-A(2) of the Act and it is for the department to verify the genuineness of the transaction by making cross verification. Since the appellant is dealing in declared goods it is submitted that the levy of tax on the same goods once again is opposed to S. 15 of the Central Sales Tax Act, 1956. Therefore, he prayed that the levy of purchase tax under S. 5(4) of the Act on a turnover of Rs. 35,625-00 may be set aside and that turnover be exempted from tax under the Act,

3. The learned State Representative argued that the appellant has not discharged the burden of proof under S. 6-A(2) of the Act as he has failed to prove that the vendor is liable to pay tax on the transaction under S. 5(4) of the Act. The commodity that is purchased by the appellant is groundnut which is taxable at the first purchase point in the State under S. 5(4) of the Act. The sale bill issued by vendor is not sufficient to establish that he has paid or would be liable to pay purchase tax on the transaction. The vendor can purchase the groundnut from Andhra Pradesh which is adjacent to the place of business of the appellant and claim exemption from tax even though he has issued a bill inclusive of tax. In that event the State will lose the whole revenue on the transation.

4. The appellant has failed to adduce evidence by filing the necessary form 32 prescribed under the Karnataka Sales Tax Rules, 1957 or any other evidence in the form of certificates or some other documents to prove that the goods in question have suffered tax under the Act. According to the decision cited by the learned counsel for the appellant in Sha Pannalal''s case, (1975) 35 STC. 109 the burden of proof is on the appellant, and the sales tax authorities are bound to give effect to the presumption envisaged under S. 6-A(2) of the Act. Therefore, he submitted there is no illegality in the orders passed by the lower authorities.

5. Though we have heard the case on 7-4-1981 the learned Sales Tax Practitioner prayed for time to submit additional evidence and accordingly he filed an application with an affidavit enclosing form 32 issued by Lakshmi Venkateswara Traders, Siddapur in respect of the groundnut seeds purchased by the appellant. The learned State Representative has taken serious objection for admitting the additional evidence on the ground that the appellant was not diligent enough to secure the form 32 from the vendors. He has not put up earnest efforts to get the form 32. Further there is no evidence by way of letters

addressed to the vendors in securing form 32. The affidavit filed by the appellant does not not help in admission of additional evidence before this Tribunal and therefore he prayed that the same may, not be admitted.

6. We have considered the argument for both the parties and perused the records. The point for our consideration is whether the appellant has proved before the lower authorities that the vendor is liable to pay purchase tax under S. 5(4) of the Act on the groundnuts sold to the appellant. Our answer to this question is in the negative. The invoice produced by the appellant before the lower authorities showed that the vendor is a registered dealer and the sale price is inclusive of tax. But that does not convincingly establish that the vendor is liable to pay purchase tax under S. 5(4) of the Act. As rightly pointed out by the learned State representative, the vendor might have purchased the groundnut from the neighbouring State of Andhra Pradesh and claimed exemption on the said purchase turnover or he might have acted as selling commission agent of non-resident principals In that event the vendor will not be liable to tax under S. 5(4) of the Act The appellant becomes the first purchaser in the State liable to tax under the Act. Since proper evidence is not produced before the authorities below and the burden of proof is not discharged by the appellant under S. 6-A(2) of the Act, the authorities are justified in disallowing the claim made by the appellant.

7. In Sha Pannalal''s case, (1975) 35 STC. 109 and referred to by the learned counsel for the appellant, the High Court of Karnataka has observed in para 15 that sub-section (2) of S. 6-A clearly states that in the absence of any acceptable evidence adduced on behalf of the dealer who is liable to pay tax on the first sale or first purchase, his turnover in respect of the declared goods in question should be presumed to be taxable under the relevant provisions of the Statute The authorities are bound to give effect to the said presumption while passing the orders of assessment notwithstanding the fact that ordinarily the burdon of proof regarding the liability of tax under a fiscal statute is on the revenue.

8. In the present case before us we find no acceptable evidence is produced before the lower authorities to prove that the vendor is liable to tax under the Act and therefore, the authorities are justified in giving effect to the presumption envisaged under S. 6-A(2) of the Act.

9. The additional evidence proposed to be submitted by the appellant on 23-4-1981 after hearing the case on 7-4-1981, is not admissible in view of Regulation 36(a)(ii) of the Karnataka Appellate Tribunal Regulations 1979. According to the said Regulation the parties to an appeal shall not be entitled to produce additional evidence whether oral of documentary, but if the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not after exercise of due diligence be produced by him at the time when the order appealed against was passed, the tribunal may allow such evidence to be admitted. In the instant case, though the assessment is finalised by the

assessing authority on 2-4-1980 the appellant failed to produce the evidence before the first appellate authority till 8th July, 1980, the date of signing of the order by that authority. Even before this Tribunal the appellant did not produce the evidence on the date of first hearing. When the matter was raised during the course of argument on 7-4-1981, he sought to file the form 32 by the next date of hearing.

10. As already observed by this Tribunal in STA. No. 719/79 in the case of Venkatesh Rao v. State of Karnataka, 1981 Kar. LJ. (Tri) 9. "Admission of additional evidence in second appeal is no rule but an exception. Discretion to admit additional evidence in second appeal can be exercised in favour of a party who shows that the evidence was not available for production earlier despite the exercise of due diligence or that the evidence though tendered before the authority below was rejected improperly or that the evidence is so material as to render its rejection grossly unjust".

11. In the instant case even the appellant''s affidavit is so bald that it does not give the exact reason for the delay involved in getting the form 32 from the vendor even though the latter is a dealer. Correspondence, if any, entered into with the vendor are not produced to substantiate the delay in securing the form 32, as rightly pointed out by the learned State Representative. Therefore, we have to give a finding against the appellant that he was not diligent enough in getting the additional evidence.

12. Even otherwise, the evidence now produced before us is not very material to help the appellant to win his case. In the form produced before us we find that the vendor only stated that he would pay the tax on the sales effected We do not find the declaration stating that the declarant was liable to pay purchase tax under S. 5(4) of the Act. As already observed by this tribunal in S. Narayana Setty v. State of Karnataka, 1980 Kar. LJ. (Tri) 97, at para 12:

"It must be held that while an assessee can prove without producing declaration in form 32 that he is not the first purchaser liable to pay tax, it is not enough if he only produces form 32 and fights shy to prove that another is the first purchaser".

The evidence produced before the assessing authority is not sufficient to prove that the vendor who sold the groundnuts to the appellant is in fact the first purchaser in the State liable to tax under S. 5(4) of the Act.

13. Therefore, we pass the following order:

The appeal is dismissed and the order passed by the Deputy Commissioner of Commercial Taxes, (Appeals) Bangalore City Division Bangalore, for the year 1977 is confirmed.