

(1981) 03 KAR CK 0012
In the Karnataka High Court
Case No : S.T.R.P. No. 213 of 1979

The State of Karnataka

APPELLANT

Vs

Shaw Wallace and Co. Ltd.

RESPONDENT

Date of Decision : 18-03-1981

Acts Referred:

Central Sales Tax Act, 1956 — Section 2 (h)
Karnataka Sales Tax Act, 1957 — Section 5 (1)

Citation : (1981) ILR (Kar) 940 : (1981) 2 KarLJ 58 : (1981) 48 STC 169

Hon'ble Judges : M.K. Srinivasa Iyengar, J; M. Rama Jois, J

Bench : Division Bench

Advocate : M.R. Vanaja, High Court Government Pleader, for the Appellant; C. Natarajan and K.P. Kumar, for the Respondent

Judgement

Srinivasa Iyengar, J.—This revision petition is preferred by the State against the order of the Karnataka Appellate Tribunal, which upheld the contention of the assessee that the bottles and crates in which liquor had been sold by it could not be made liable to sales tax at the rate applicable to liquor under item 38 of the Second Schedule to the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act"). The Tribunal held that there was a separate agreement in regard to the sale of bottles and crates and, therefore, the value of glass bottles would have to be subjected to tax under item 109 of the Second Schedule to the Karnataka Sales Tax Act and as far as the crates were concerned which were of wooden material they would be liable to tax u/s 5(1) of the Act. As the exact figures had not been ascertained by the assessing authority it remanded the matter to him to determine the values of these items separately and charge tax accordingly.

2. In this revision petition it is contended that this view taken by the Tribunal is erroneous and the action of the authorities to levy tax at 25 per cent under item 38 of the Second Schedule in regard to the containers also should have been upheld.

3. The first appellate authority was categorical in his order that there was an agreement for separately charging for the bottles and crates and the price varied according to the size of the container. There was no dispute about this fact before the Tribunal and in fact the Tribunal held that there was such an agreement. It found that "the appellant has shown separately the price of liquors and that of the packing materials. The cost of the packing materials is seen to vary from 8 per cent to 12 per cent depending on the size of the bottles used". The observations of the first appellate authority were to the following effect, under the heading "salient features" :

"(4) As per the price list which has been shown as an exhibit before the appellate authority it is seen that there is an implied and explicit contract of sales of liquors as well as the containers to the customers; that means the price of the liquor is separately fixed including the value of the bottles, etc., and the value of the bottles is recovered from the purchasers in addition to the sale value of liquors. The price list is a consolidated one."

And again under item (6) it was observed "further it has been established that there was a clear agreement of sale between the appellant and its customers in respect of liquors coupled with packing materials. This means to say that the packing materials form the subject-matter of agreement of sale between the appellant and the customers" The Tribunal further noticed that item 38 of the Second Schedule only mentioned liquor other than country liquor and did not specify that it should be sold in any sealed container. Item 98 of the Second Schedule makes provision for tinned, canned and bottled foods and fruits including foods and fruits packed in sealed containers. There was thus a distinction in regard to the articles chosen for tax at particular rates. Item 109 of the Second Schedule makes provision for taxing glass-ware and glass bottles. There was no specific rule in relation to wooden crates and, therefore, they would come within the ambit of section 5(1) of the Act. The reasoning of the Tribunal was that when there was an agreement for charging separately for the containers and the schedule to the Act also specified different items mentioning different rates, the rates that are applicable to each one of the items should be considered and not only one of the rates which might be higher in regard to one of the items. It also referred to the decision of the Madras High Court in *K. Natarajan and Sons v. State of Tamil Nadu* ([1977] 39 S.T.C. 443.), wherein the question about the rate applicable in regard to tins in which kerosene had been sold was considered. The tins had been subjected to a separate charge of sales tax at a rate lower than that applicable to kerosene. The Tribunal was of the opinion that that decision was on all fours with the instant case.

4. The principle is well-established that the value of the containers is assessable to sales tax if there was an express or implied agreement for sale of such containers. The Supreme Court has observed to this effect in the case of *Commissioner of Taxes Assam, Shillong Vs. Prabhat Marketing Co. Ltd., Gauhati*, and further held that the mere fact that the price of the containers was not

separately fixed made no difference to the assessment of the sales tax and the question whether there was an agreement to sell packing materials was a question of fact depending upon the circumstances in each case.

5. From the facts found by the Tribunal it is clear that there was an agreement to sell the bottles and crates in which the liquor was conveyed and there was also agreement in regard to the price of these containers. Therefore, the turnover in regard to these items had to be determined and the appropriate rate of sales tax could be charged as provided in the Act. It is seen that under the provisions of the Karnataka Excise Act, liquor had to be sold in sealed containers. This does not automatically lead to the conclusion that the same rate of sales tax is applicable to the containers also. No such presumption can be made and especially so when separate rates are specified in the Act itself in regard to the containers as well as the contents. Those specific provisions would have to be applied; otherwise the imposition of tax would not be in accordance with law. The learned Government Advocate also sought to place reliance upon the decision of the Supreme Court reported in *Hindusthan Sugar Mills Vs. State of Rajasthan and Others*, In our opinion the principle enunciated therein is not attracted to the facts in the instant case. In that case there was a price fixed by the Cement Control Order which included the freight charges. The court held that "by reason of the provisions of the Control Order, which governed the transactions of sale of cement entered into by the assessee with the purchasers, the amount of freight formed part of the sale price within the meaning of the first part of the definition of that term in section 2(p) of the Rajasthan Act and section 2(h) of the Central Act and was includible in the turnover of the assessee". There is no such price fixed under any enactment which included the price of the containers. As such the aforesaid decision has no bearing on the question involved in the instant case.

6. In our opinion the view taken by the Tribunal is correct. Accordingly, this revision petition fails and is dismissed. Parties to bear their own costs.

7. Petition dismissed.