

(1973) 07 KAR CK 0018

In the Karnataka High Court

Case No : S.T.R.P. No's. 34 of 1972 and 24, 26, 27, 32, 33 and 34 of 1973

The State of Mysore

APPELLANT

Vs

M. Devendrappa Setty and Sons and Others

RESPONDENT

Date of Decision : 18-07-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 15

Mysore Sales Tax Act, 1957 — Section 23 (1), 5 (4)

Citation : (1974) 1 KarLJ 47 : (1973) 32 STC 476

Hon'ble Judges : G.K. Govinda Bhat, C.J.; Jagannatha Shetty, J

Bench : Division Bench

Advocate : M.P. Chandrakantraj, Urs, High Court Government Advocate, for the Appellant; K. Srinivasan and G. Sarangan, for the Respondent

Judgement

Govinda Bhat, C.J.—This is a batch of seven sales tax revision petitions preferred by the State of Mysore u/s 23(1) of the Mysore Sales Tax Act, 1957, hereinafter referred to as the "Act". They raise a common question of law. The respondents are dealers under the Act. The period of assessment in all the cases is from 1st April, 1969, to 31st March, 1970. The respondents deal in groundnuts and/or cotton and they being "declared goods" are liable to a single point tax u/s 5(4) read with Schedule IV of the Act. Prior to 1st April, 1970, the point of levy was purchase by the last dealer in the State liable to tax under the Act. By Mysore Act 9 of 1970, the point of levy was changed and it was made "purchase by the first or earliest of the successive dealers in the State" liable to tax under the Act. It is common ground that the amendment changing the point of levy has no retrospective or retroactive operation and is operative only with effect 1st April, 1970.

2. The question before the Sales Tax Appellate Tribunal in all the cases relating to the respondents was whether their respective turnovers relating to groundnut and/or cotton held in stock as on 31st March, 1970, were liable to tax u/s 5(4) read with Schedule IV of the Act as it stood before the amendment by Mysore

Act 9 of 1970. The Tribunal, following the decision of the Supreme Court in a similar case in *State of Madras Vs. T. Narayanaswami Naidu and Another*, , held that the said turnovers were not exigible to tax and, consequently, allowed the appeals preferred by the dealers. The decision of the Tribunal has been questioned by the department in these revision petitions.

3. In *State of Madras Vs. T. Narayanaswami Naidu and Another*, which arose under the Madras General Sales Tax Act, 1959, the question was whether the assessee was entitled to claim deduction in respect of the value of the stock of cotton held on 31st March, 1961. u/s 4 of the Madras Act read with Schedule II thereto, cotton was specified as liable to a single point tax at the "point of last purchase" in the State. In assessing the assessee, who was a dealer in cotton and cotton seeds, the Commercial Tax Officer did not exempt purchases to the extent of Rs. 2,27,250.00 on the ground that cotton of that value was in stock on the last day of the assessment year with the assessee and was liable to be taxed as last purchase. The Madras High Court, when the matter came up in revision, held that the assessee was entitled to exemption to the extent of Rs. 2,27,250.00. The matter was taken to the Supreme Court. It was argued before the Supreme Court on behalf of the State of Madras that a tax under the Act is a yearly tax and if that is so, then what happens in subsequent years cannot be taken into consideration in determining the taxability of any purchases inside the State of declared goods and, further, that the taxable event is the last purchase in the State during the assessment year and if stocks are held at the end of the assessment year, it follows that an assessee holding stocks is the last purchaser in the State. That argument was repelled by the Supreme Court and it was held that a dealer is not liable to pay tax on the purchases until the purchases acquired the quality of being the last purchases inside the State. This is what the Supreme Court stated :

"..... It is true that sections 3 and 4 speak of "a year", i.e., the financial year, and it is only the turnover during that year that is liable to taxation in the hands of the assessee, but section 4 has to be read with the Second Schedule, and reading section 4 with the Second Schedule, it seems to us clear that a dealer is not liable to pay a tax on the purchases until the purchases acquire the quality of being the last purchases inside the State. In other words, when he files a return and declares the stock in hand, the stock in hand cannot be said to have been acquired by last purchase because he may still during the next assessment year sell it or he may consume it himself or the goods may be destroyed, etc. He would be entitled to claim before the assessing authorities that the character of acquisition of the stock in hand was undetermined; in the light of subsequent events it may or may not become the last purchase inside the State."

The above construction was also sought to be supported by an additional ground that it is in consonance with section 15 of the Central Sales Tax Act.

4. Sri Chandrakantraj Urs, learned Senior Government Advocate, did not dispute that the ratio of the decision in *State of Madras Vs. T. Narayanaswami Naidu and*

Another, would govern the instant cases, if the Act had not been amended by Mysore Act 9 of 1970 and the point of levy had not been altered. But he argued that by virtue of the provisions of the Central Sales Tax Act, 1956, the States have no power to levy purchase tax on declared goods at more than one stage in the State and it was that consideration which prompted the Supreme Court to hold that the character of the stock in hand on the last day of the year of assessment was undetermined. He submitted that in view of the amendment effected by Act 9 of 1970, there was no possibility of the stocks held by the dealer being made liable to purchase tax in the State liable to tax under the Act.

5. In our opinion, the contention of the learned Government Advocate cannot be accepted. The question of liability to tax under the Act has to be determined with reference to the state of law as it existed during the relevant assessment year and not with reference to the law in force during a subsequent period. If the law in force during the period of assessment, viz., 1st April, 1969, to 31st March, 1970, is correctly applied in accordance with the ratio of the decision of the Supreme Court, it is clear that the stock in hand with the dealers on 31st March, 1970, had not acquired the quality of being the last purchases inside the State. The view taken by the Tribunal, therefore, was correct.

6. For the reasons stated above, these revision petitions fail and are dismissed, but without costs.

7. Petition dismissed.