(1972) 11 KAR CK 0008

In the Karnataka High Court

Case No : Criminal Appeal No''s. 261 to 265 of 1971

The State of Mysore APPELLANT

Vs

S.R. Hulekal and Others RESPONDENT

Date of Decision : 09-11-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 7, 8 (4), 9 (2)
Mysore Sales Tax Act, 1948 — Section 29 (1), 29 (1) (d), 29 (2)

Citation : (1973) 1 MysLJ 53 : (1973) 31 STC 513

Hon'ble Judges : M.S. Nesargi, J;C. Honniah, J

Bench : Division Bench

Advocate : S.M. Wali, State Public Prosecutor, for the Appellant; T.S. Ramachandra, for the Respondent

Judgement

Nesargi, J.—These appeals are filed by the State against the orders of acquittal passed by the Principal Munsiff and Judicial Magistrate, First Class, Sirsi, in C.C. Nos. 685, 687, 689, 75 and 77 of 1970 respectively, in favour of the respondents concerned in the respective cases. We propose to dispose of these appeals by a common judgment as a common question of law is involved in all these appeals. The question that arises is whether a prosecution u/s 29(2) of the Mysore Sales Tax Act, 1957 (to be hereinafter referred to as the "Mysore Act"), is competent in regard to non-payment of tax levied under the provisions of the Central Sales Tax Act, 1956 (to be hereinafter referred to as the "Central Act").

2. These appeals have arisen out of the criminal cases filed u/s 29(1) of the Mysore Act on the allegations that the concerned respondents had failed to pay the tax levied against them under the provisions of the Central Act. Assistance of section 9(2) of the Central Act was taken in support of the prosecution.

3. It may be, in our opinion, assumed for a decision in this case that the concerned respondents had committed default in payment of the tax payable by them as assessed under the Central Act. Section 29(1)(d) of the Mysore Act reads as follows :

"29. Offences and penalties. - (1) Any person who ....

(d) fails to pay within the time allowed any tax assessed on him or any penalty levied on him under this Act ....

shall, on conviction by a Magistrate, not below the rank of a Second Class Magistrate, be liable to a fine which may extend to two hundred rupees."

4. A reading of this provision makes it plain that a prosecution under this provision is competent if the assessee under the Mysore Act fails to pay the tax assessed on him within the time allowed by the authorities. It does not deal with failure to pay tax assessed on an assessee under the Central Act.

Section 9(2) of the Central Act reads as follows :

"9. Levy and collection of tax and penalties ....

(2) Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly :

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."

5. Here again, it is clearly seen that section 9(2) of the Central Act does not lay down that in regard to prosecution for non-payment, the prosecution can be made under the general sales tax law of the State. The provision deals only with collection of tax and enforcement of payment of tax. Prosecuting a person for non-payment of tax or committing default in payment of tax can, in no way, be considered as enforcement of payment of tax. Moreover, we find that the Central Act has nowhere made committing default in payment of tax by an assessee under the Act, an offence under the Act. Section 10 of the Central Act lays down what acts are regarded as offences under the Central Act. Section 10 reads as follows :

"10. Penalties. - If any person -

(a) fails to get himself registered as required by section 7; or

(b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or

(c) not being a registered dealer, falsely represents when purchasing goods in the course of inter-State trade or commerce that he is a registered dealer; or

(d) after purchasing any goods for any of the purposes specified in clause (b) of sub-section (3) of section 8 fails, without reasonable excuse, to make use of the goods for any such purpose;

(e) has in his possession any form prescribed for the purpose of sub-section (4) of section 8 which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder;

(f) collects any amount by way of tax in contravention of the provisions contained in section 9-A;

he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues."

6. The above provision shows that the Central Act has not provided that when an assessee commits default, he commits an offence for which he can be prosecuted.

7. Therefore, it is clear to our mind that committing default in payment of tax levied under the Central Act does not constitute an offence for which the defaulter can be prosecuted. When the Central Act itself does not make committing a default in payment of tax an offence, aid of section 29(1) of the Mysore Act cannot be invoked to prosecute a person who has committed default in payment of tax assessed under the Central Act.

8. In view of both the reasons, viz., section 9(2) of the Central Act not providing that a prosecution u/s 29(1) of the Mysore Act could be made, and the Central Act not making commission of a default in payment of tax levied under the Central Act an offence, we are of the opinion that the prosecution in these cases is incompetent. We, therefore, dismiss these appeals.

9. Appeals dismissed.

