(1974) 07 KAR CK 0019

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 85 of 1973

The State of Mysore APPELLANT

Vs

S.V. Pagadi RESPONDENT

Date of Decision : 30-07-1974

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 18 (1), 23 (1)

Citation : (1975) 35 STC 439

Hon'ble Judges : G.K. Govinda Bhat, C.J;M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : M.P. Chandrakantaraj Urs, for the Appellant; K. Balakrishna, for the Respondent

Judgement

Govinda Bhat, C.J.—This revision petition u/s 23(1) of the Karnataka Sales Tax Act, 1957, preferred by the State relates to the assessment year 21st March, 1967, to 20th November, 1967, and it is directed against the order dated 22nd November, 1972, in S.T.A. No. 222 of 1972, on the file of the Mysore Sales Tax Appellate Tribunal, Bangalore.

2. The matter arises this way : The respondent is a dealer under the Karnataka Sales Tax Act, 1957, hereinafter called the "Act". The dealer had collected sales tax amounting to Rs. 565.80 on the sales of iron and steel rails, although he was the second dealer in the said goods. Under the Act, it is only the first or earliest of the successive dealers in the State that is liable to tax and, therefore, the dealer is admittedly not liable to tax on the said sales. However, the dealer had collected sales tax when the transactions were not exigible to tax. On the ground that the dealer had contravened section 18(1) of the Act, the commercial tax authorities levied a penalty of Rs. 565.80, which is equivalent to the amount collected by the dealer. That order was affirmed by the Deputy Commissioner of Commercial Taxes, Dharwar, but was reversed by the Tribunal following the decision of this court in Hindustan Drug House v. State of Mysore ([1970] 25 S.T.C. 182). The correctness of the said decision has been challenged in this

revision petition by the State.

3. In State of Mysore v. S. S. Dhundushi ([1975] 35 S.T.C. 411 : (1973) 2 Mys. L.J. 445), this court held that the amendment of section 18(1) of the Act which came into force on 1st April, 1966, has not made any difference in the position of law as laid down earlier in V. P. Patil v. Commercial Tax Officer ([1970] 25 S.T.C. 449) and, therefore, penalty cannot be levied. This court derived support for its view from the decision of the Supreme Court in State of Uttar Pradesh and Another Vs. Annapurna Biscuit Mfg. Company,

4. It was argued by Sri Chandrakantaraj Urs, the learned Senior High Court Government Advocate, that the observation in S. S. Dhundushi''s case ([1975] 35 S.T.C. 411 : (1973) 2 Mys L.J. 445) that the provisions of section 29-A of the U.P. Sales Tax Act, which came up before the Supreme Court are in pari materia with those of section 18(1) of the Act is not correct. The ratio of the decision does not rest on the fact whether the two provisions are in pari materia or not. The ratio of the decision is based on the dicta of the Supreme Court in Ashoka Marketing Ltd. Vs. State of Bihar and Another, . An extract form the judgment in the said case was relied upon in the case of State of Uttar Pradesh and Another Vs. Annapurna Biscuit Mfg. Company, This is what Shah, J., as he then was, stated in the case of Ashoka Marketing Ltd. Vs. State of Bihar and Another,

"The State Legislature may under entry 54, List II, be competent to enact a law in respect of matters necessarily incidental to ''tax on the sale and purchase of goods''. But a provision compelling a dealer who has deliberately or erroneously recovered an amount from the purchaser on a representation that he is entitled to recover it to recoup himself for payment of tax, to pay over that amount to the State cannot, in our judgment, be regarded as necessarily incidental to entry 54, List II. In effect the provision is one for levying an amount as tax which the State is incompetent to levy. A mere device cannot be permitted to defeat the provisions of the Constitution by clothing the claim in the form of a demand for depositing the money with the State which the dealer has collected, but which he was not entitled to collect."

5. The law settled by the Supreme Court is that there cannot be a provision in any Sales Tax Act to compel a dealer who has deliberately or erroneously recovered an amount from the purchaser on a representation that he is entitled to recover or recoup himself for payment of tax to pay that amount to the State when there is not levy of tax on the sale or purchase of the goods. Therefore, the view taken by this court in Dhundushi''s case ([1975] 35 S.T.C. 411 : (1973) 2 Mys. L.J. 445) is right and, accordingly, the Tribunal was right in reversing the order of the authorities below and setting aside the order levying penalty.

6. Accordingly, this revision petition fails and is dismissed with costs. Advocate''s fee Rs. 50.

7. Petition dismissed.