
(1976) 03 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 635 of 1973

V. Laxman Mallya

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 01-03-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Sales Tax Act, 1957 — Section 6

Citation : (1976) 38 STC 51

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

Bench : Single Bench

Advocate : U.L. Narayana Rao, for the Appellant; M.R. Laxmikantharaj Urs, High Court Government Pleader, for the Respondent

Judgement

Srinivasa Iyengar, J.—In this writ petition filed under articles 226 and 227 of the Constitution of India, amendment effected to section 6 of the Karnataka Sales Tax Act, 1957, by Karnataka Act No. 9 of 1970, is challenged as unconstitutional. Further, the assessment made by the Commercial Tax Officer, Second Circle, Udipi, dated 30th December, 1972, for the year ending 31st March, 1971, is asked to be quashed to the extent objected to, viz,, the inclusion of a sum of Rs. 28,107.48 in computing the turnover.

2. By Act No. 9 of 1970, section 6 of the original Act was substituted by another section levying purchase tax under certain circumstances. Similar provision had been introduced in other States, in particular, Kerala and Madras. The High Court of Kerala held that the new provision was valid and constitutional, whereas the High Court of Madras held to the contrary. As against the decision of the High Court of Madras, the matter was taken up in appeal to the Supreme Court. The decision of the Supreme Court is reported in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, . The learned Judges held that the interpretation of the provisions by the Kerala High Court was correct and allowed the appeals filed against the judgment of the High Court of Madras. The provisions introduced in

section 6 by Karnataka Act No. 9 of 1970 is in substance the same as was to be found in section 5A of the Kerala General Sales Tax Act, 1963. The provision in the Madras Sales Tax Act, which was section 7-A, was also similar to section 5A of the Kerala Act. In these circumstances, Shri U. L. Narayana Rao, the learned counsel for the petitioner, submitted that the challenge to the validity of section 6 cannot justifiably be maintained. The principle enunciated by the Supreme Court equally applies to section 6 of the Karnataka Act as amended by Act No. 9 of 1970. Accordingly, the challenge to the validity of the section must fail.

3. Challenge to the computation of the turnover by not excluding the alleged transport charges must also, in my opinion, fail in the circumstances of the case. The Commercial Tax Officer observed that in all the delivery notes it had been written that the sales were to be at Mangalore and further that it had been admitted that only after transport the value is worked out and quantity fixed. The petitioner is a dealer having his principal place of business at Karkala. He supplies firewood to the tile factories at Mangalore and other places. On the facts as narrated by the Commercial Tax Officer, it appears prima facie that the sales take place only after transportation to Mangalore and the quantity to be sold is ascertained at that place and the price is also fixed there which includes not merely the price of the firewood but also the transport charges. This court cannot go into the correctness of the disputed questions of fact in a petition under article 226. If the petitioner was aggrieved by the finding of the Commercial Tax Officer as being opposed to the material on record or otherwise unjustified, he ought to have filed an appeal against his assessment. In fact it transpires that the Commercial Tax Officer did not allow various other deductions claimed by the assessee and it has been stated in the writ petition that as regards these items he would prefer an appeal separately. It is, therefore, clear that if the petitioner felt aggrieved by the finding of fact in regard to transport charges, he could have filed an appeal. The finding of the Commercial Tax Officer cannot, in these circumstances, be interfered with in these proceedings.

4. Accordingly, this writ petition fails and is dismissed. No costs.

5. Petition dismissed.