

(1971) 05 KAR CK 0007
In the Karnataka High Court
Case No : S.T.R.P. No's. 32 to 34 of 1970

V.M.K. Marimuthu Nadar

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 27-05-1971

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 15 (b)
Mysore Sales Tax Act, 1957 — Section 23, 5 (4)

Citation : (1972) 1 MysLJ 209 : (1971) 28 STC 218

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

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; S.R. Rajasekhara Murthy, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, J.—These are three revision petitions preferred by an assessee u/s 23 of the Mysore Sales Tax Act, 1957, hereinafter called the Act, and they relate to the assessment years 1963-64, 1964-65 and 1965-66. The assessee sold in the course of inter-State trade gingelly seeds purchased in the State of Mysore. In respect of some of the purchases the assessee was the first purchaser and in respect of the rest, the second purchaser. Gingelly seeds are declared goods in respect of which a single point tax is levied u/s 5(4) of the Act. The assessee's turnovers as second purchaser with which we are concerned were as follows :-

as				second		Year		Turnover
								purchaser
						1963-64		Rs.
4,60,180.94	1964-65	Rs.	3,11,183.41	1965-66	Rs.	2,42,442.67		

2. The assessee claimed that it is entitled to refund of sales tax paid under the Act on all gingelly seeds sold by it in the course of inter-State sale. The claim was made as per the provisions of the proviso to section 5(4) of the Act read with rule 39-A of the Mysore Sales Tax Rules, hereinafter called the Rules. The

Sales Tax Appellate Tribunal held that the assessee is not entitled to claim refund on the ground that the assessee has not paid the tax and that under rule 39-A the refund can be claimed only where the dealer who has made the inter-State sale has paid the tax under the Act. In the view of the Tribunal, the payment of tax by the person claiming refund is a prerequisite condition.

3. In our opinion, the view of the law taken by the Tribunal is opposed to the plain language of rule 39-A.

4. Article 286(3) of the Constitution of India, introduced by the Constitution (Sixth Amendment) Act, 1956, empowers the Parliament to make any law imposing such restrictions and conditions in regard to the levy and rates of levy and other incidental matters with regard to the imposition of tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce. Pursuant to the power conferred by article 286(3), the Parliament has enacted the Central Sales Tax Act, 1956. Section 15 of the said Act is the law made by the Parliament imposing restrictions and conditions in regard to tax on the sale or purchase of declared goods within a State. Clause (b) of section 15 provides as follows :

"15. (b) Where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

5. The plain meaning of the above provision is that where a tax has been levied and collected under the State law on declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so paid shall be refunded; the person to whom the refund shall be made is left to be provided by the State sales tax law. It is obligatory on the State to make provision for refund of tax levied on declared goods which are sold in the course of inter-State trade or commerce. The State law can only provide as to who is the person to whom the tax amount shall be refunded. The law cannot say that the tax so levied shall not be refunded at all.

6. To give effect to the provisions of section 15(b) of the Central Sales Tax Act, the Act has made provisions in the first proviso to section 5(4) of the Act as follows :

"Provided that where tax has been paid in respect of the sale or purchase of any of the declared goods under this sub-section and such goods are subsequently sold in the course of inter-State trade or commerce, the tax paid under this Act shall be refunded to such person in such manner and subject to such conditions as may be prescribed."

7. It will be seen that the above proviso has adopted the language of clause (b) of section 15 of the Central Sales Tax Act. Rule 39-A which provides for refund of

tax reads thus :

"39-A. Refund of tax in the case of certain types of sales of declared goods. - (1) The tax levied under sub-section (4) of section 5 in respect of the sale or purchase inside the State of any goods specified therein shall, if such goods are sold in the course of inter-State trade or commerce, be refunded in the manner and subject to the conditions prescribed in this rule to the dealer who has made the inter-State sale (and has paid tax under the Central Sales Tax Act, 1956 (Central Act 74 of 1956), in respect of such sale.)

* * *

8. (The portion within the brackets has been struck down as ultra vires by this court in *Munshi Abdul Rahiman & Brothers and Another v. Commercial Tax Officer, I Circle, Hubli, and Others* [1967] 20 STC 89)

9. There is no ambiguity in the language of rule 39-A. It says that the refund shall be made to the dealer who has made the inter-State sale. In order to claim the refund, the conditions to be satisfied are : (1) Tax should have been collected under the Act on declared goods; and (2) the said goods should be sold in inter-State sales. If these facts are proved, the refund shall be made to the dealer who has made the inter-State sales. The law does not lay down a further condition that the dealer who has made the inter-State sales should have paid the tax under the Act. The petitioner's claims for refund were rejected on the sole ground that the tax had been collected from the first purchasers and not from the petitioner who was the second purchaser in the State. The petitioner having satisfied the two conditions referred to above, was entitled to the refund of tax collected under the Act. The sales tax authorities were therefore not right in rejecting the claim for refund.

10. In the result, for the reasons stated above, we allow these revision petitions, reverse the decision of the Tribunal in S.T.A. Nos. 160, 161 and 162 of 1969 and direct the assessing authority to make the refund to the assessee. The assessee is entitled to its costs.

11. Advocate's fee Rs. 200, one set.

12. Petitions allowed.