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Court : Karnataka

Decided On : Aug-10-1954

Reported in : 1955CriLJ524; ILR1954KAR460; [1955]6STC211(Kar)

Judge : Balakrishnaiya, J.

Acts : Mysore Sales Tax Act, 1948 - Sections 12, 14, 20 and 22; Madras General Sales Tax Act; Sale of Goods Act

Appeal No. : Criminal Revision Petition Nos. 113 and 114 of 1954

Appellant : Mohamed Khasim

Respondent : State of Mysore

Advocate for Def. : Nittoor Srinivasa Rao, Adv.-General

Advocate for Pet/Ap. : S. Nanjundaswamy, Adv.

Judgement :
ORDER

1. The petitioner who is common to these petitions has been convicted by the First Class Magistrate, Civil Station, Bangalore, in C.C. Nos. 1180 and 1181/53 on his file and sentenced to pay a fine of Rs. 25 in each case.

2. The prosecution was under section 20 of the Mysore Sales Tax Act and related to the default in the payment of sales tax assessed amounting to Rs. 243-11-3 for

the year 1950-51 and Rs. 956-6-3 for the year 1949-50. A common plea that he is not liable to pay taxes levied was entered into in both these cases. They were tried together as the offences were similar and against the same person. Mr. Nanjundaswamy, on behalf of the petitioner, raised rather faintly, an argument that the joint trial is void. I am unable to appreciate the argument since the procedure adopted is neither illegal nor is it shown that any prejudice has been caused to the petitioner thereby.

3. It is next contended by the learned advocate for the petitioner that the petitioner was not afforded adequate opportunity to prove his defence. This contention is not supported by records. The petitioner failed to produce the records offered to the Court as evidence and closed his case by examining one defence witness. He is admittedly a building contractor who has drawn the consolidated bills tendered to the Corporation for having constructed buildings. In the absence of proof regarding the exact value of labour expended a reduction of 30 per cent. on the aggregate value of the bills drawn was allowed towards labour by the assessing officer and the balance was adopted as the basis for fixing the turnover for purposes of determining the value of materials supplied and used in the contracts.

4. It is undisputed that the assessing officer did follow the procedure prescribed under section 12 of the Act in levying the tax under question. In spite of demand notices having been served on the petitioner; the taxes remained unpaid and hence a prosecution was launched. Against the tax levied by the Sales Tax Officer, the assessee has a right to object to the tax under section 14 of the Act. Section 15 provides for revision by Government and a demand for reference to the High Court on a question of law may be availed of by the assessee under section 16 of the Act. He does not appear to have availed himself of the remedies so provided. When the assessing offer has sought the help of the Court under section 20 of the Act for enforcement of the demand, the petitioners put forward his plea that he is not liable for taxation. That plea was not available to him under section 22 as the Court is not permitted to call into question the assessment levied in accordance with the provisions of the Act.

5. It has been held in more than case by this High Court that a Criminal Court cannot adjudicate upon the validity of the tax under the provisions of the Sales Tax Act : Vide Rama Iyer v. Government of Mysore ([1951] 2 S.T.C. 122; A.I.R. 1951 Mys. 70).

6. Lastly it was contended that a works contract of the nature is not liable to be taxed under the Sales Tax Act and the learned counsel for the petitioner rested his contention on a recent decision of the Madras High Court. I am referred to the extract in the journal section of 67 Mad. L.W. 72, Gannon Dunkerley & Co. v. State of Madras ([1954] 5 S.T.C. 216; A.I.R. 1954 Mad. 1130). In that case the Madras High Court has held that the power of taxing works contract under the pretence of sale of goods is ultra vires the Provincial Legislature. In the absence of a full report it is rather difficult to appreciate the applicability of that decision to the facts of the cases under consideration.

7. A month earlier to that decision the same Bench of the Madras High Court dealt with a case of a job printer and it has been reported in Ramaswami v. State of Madras : AIR1954 Mad980 . The assessee there was a job printer and tendered bills for printing works making a distinction between the value of printing and also the value of papers supplied separately. The learned Judge observed that if it was the customer's paper that was used and if that paper was sold by the printer himself and used for the printing, that sale would be liable to tax, if the total turnover of these sale was above Rs. 10,000. Regarding another item in the bill shown as a receipt for Civil Court work done, which obviously included the value of paper supplied and the labour involved in printing, the Court remarked that there was no need to apportion the amount between the cost of labour and cost of material deemed to have been sold within the meaning of the definition of 'works contract' as the amount is below the taxable limit.

8. In the later decision referred to above, full report of which is yet to be published, the assessee was engaged in constructing contracts of all kinds such as buildings, road and bridges, etc. He contended that works contracts of the nature are not contracts for sale of goods and cannot be brought within the ambit of the Madras General Sales Tax Act. The Learned Judges who dealt with that contention

observed that the transaction denoted by the expression 'sale of goods' in the Sale of Goods Act has a well defined meaning under law and that the power of Provincial Legislature to levy a tax on sale of goods is confined only to the transaction of sale as understood by the Parliament in the United Kingdom in the tax relating to sale of goods and any attempt of the Legislature to tax under the guise of such power transactions which are outside it, will be ultra vires and must be declared as invalid. It was also held in that case that contracts which involve labour and work may relate either to chattel or to immovable properties and that as the contractor is required to supply himself with the materials necessary for producing the things by employing labour and work such contracts are considered in law to be entire and invisible is the sense that complete fulfilment of promise is a condition precedent for demanding consideration and that the supply of material by the employee or the contractor does not involve any element of sale.

9. In that view the learned Judges concluded that the amendment introduced in 1947 containing a definition of 'works contract' including an extension of the concept of sale of goods was ultra vires the Provincial Legislature. It is difficult to follow this reasoning. It will be remembered that earlier the same Judges had held that in the case of a job printer who supplied paper for printing the material used may be deemed as having been sold and that such sale would be liable to tax. Following the same train of reasoning building contract cannot also be considered indivisible any more than a contract to produce a book. The Amending Act takes note of the movable properties utilised in the works contract and includes the material used for construction of immovable property in the definition of goods. The Legislature has made its intention very clear and hence necessary changes were also made in the definition of the word 'sale' which provided that sale includes also a transfer of property in goods involved in the execution of a works contract. The new definition that was introduced relating to works contract may basically relate to immovable property like building, road and bridge or it may relate to movable property like car, radio, or other articles. The nature of the work may be construction, fitting out, improvement of repair. So the case of either the construction of a building or the repair of a car comes under the definition of works contract with taxable turnover.

10. It is obvious that the material that was supplied for construction merges in the immovable property and its value has to be apportioned for purposes of taxation, as contemplated in the Sales Tax Act and hence the meaning of sale in the Sales Tax Act can neither be confined nor limited to the meaning of that expression as understood in the Sale of Goods Act. The Mysore Sales Tax Act of 1948 incorporates the amendments of 1947 in the Madras Act. It is not necessary to labour this point further as the petitioner has not raised these grounds in any of the petitions under consideration; besides, as already remarked, the particular bills of construction by which he has drawn the amounts from the Corporation were not made available.

11. Indeed, the contract to supply labour and work cannot be taxed under the Sales Tax Act. The contention was once raised by the assessee that the supplied merely labour. That contention is now abandoned. The taxing officer has in the absence of proof allowed a reduction of 30 per cent. from the entire bill amount and this does not appear to be either inadequate or unreasonable. On a consideration of the circumstances, I am of opinion that no case is made out for interference in either of these petitions.

12. Lastly, the learned advocate urged that the fines levied are rather severe. The amounts of taxes in respect of which there was default in payment are Rs. 243-11-3 and Rs. 956-6-3 respectively. The Advocate General who was heard, has left to Court the consideration of the question of severity of the sentence. Taking call circumstance into consideration, I reduce the amount of fine to Rs. 10 and Rs. 20 respectively in place of Rs. 25 and Rs. 25 respectively imposed by the trial Court. The direction for the recovery of tax levied will stand. With the modification of sentence as indicated above, both the petitions are dismissed.

13. Ordered accordingly.

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