

K. Narayana Setty Vs. State of Mysore

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Court : Karnataka

Decided On : Jun-17-1953

Reported in : AIR1954Kant17; AIR1954Mys17

Judge : Balakrishnaiya, J.

Acts : Mysore Sales Tax Act, 1948 - Sections 14, 15, 16, 20 and 22; Income-tax Act, 1922 - Sections 45 and 67; Mysore House Rent Control Act

Appeal No. : Criminal Revn. Petn. Nos. 8 and 9 of 1953

Appellant : K. Narayana Setty

Respondent : State of Mysore

Advocate for Def. : A.R. Somanatha Iyer, Adv. General

Advocate for Pet/Ap. : P. Krishnappa, Adv.

Judgement :

ORDER

1. The petitioners in both these cases were prosecuted under Section 20 (b), Mysore Sales Tax Act for failure to pay the tax assessed and demanded; the trial Court found them guilty and sentenced to pay a fine of Rs. 100/- each, with a further direction for the recovery of the tax assessed respectively against each of them.

2. Mr. P. Krishnappa, on behalf of the petitioners contended that the tax demanded is illegal and otherwise 'ultra vires' the Sales Tax Act. Both the petitioners are merchants dealing in cocoanuts and their defence is common. It is argued that the petitioners are taxed illegally on the turn-over basis of sales as if they were dealers in general commodities; whereas being dealers in cocoanuts, they should have been classed under the category of fruit merchants and dealt with on basis specially applicable to fruit merchants and taxed according to the rates fixed in the Government Notification issued in that behalf. In support of his contention Mr. Krishnappa relied upon the cases of this Court reported in -- 'Kariappa v. Govt. of Mysore' AIR 1953 Mys 12 (A); -- 'Venkata-chala Chetty v. Govt. of Mysore' AIR 1953 Mys 18 (B); and -- 'Subban Beigh v. Govt. of Mysore' AIR 1953 Mys 19 (C). The first of these cases relates to the question whether a merchant selling fried-gram could be brought under the purview of the Sales Tax Act; the next deals with the qualifications necessary for a 'dealer' under the Sales Tax Act and the last case contains a discussion whether a commission agent is or is not a 'dealer' within the definition of that term in the Act. The interpretation depends upon the particular circumstances of each case, and it does not appear to be relevant to deal with the merits of those cases for the purpose of the cases under consideration.

It is however contended that the principle laid down in these cases must be adopted, as a guide to the disposal of the present petitions. In the case reported in -- 'AIR 1953 Mys 12 (A)', it is laid down that

'it is only the assessment made under the provisions of the Sales Tax Act that is not liable to be questioned under Section 22; however, if an assessment made or an order passed, is ultra vires and is entirely outside the scope of the Sales Tax Act, the assessment or an order made can be challenged in the ordinary Courts, civil or criminal as it is an order made beyond the scope of the Sales Tax Act and not an order made under the Act which alone is contemplated under Section 22'.

Almost similar is the interpretation laid down in -- 'AIR 1953 Mys 19 (C)', by the same learned Judge. The main point for consideration in those two cases was whether a particular assessment was one made under the Act or not and involved

the interpretation of the expression 'assessment made under the Act'. This expression also occurs in Section 67, Income-tax Act.

The learned Judge has discussed this point at length, quoting with approval a passage from the commentary under Section 67, Income-tax Act by Mr. A. C. Sampath Iyengar (III Edition) embodying the then prevailing judicial opinion that an assessment based on some provision of the Act which was being impugned as ultra vires was not within the bar of the section since no assessment which was ultra vires or in excess of jurisdiction, could be said to be one 'made under the Act' and thus an assessment made by an Income-tax Officer contrary to the rules made under the Act, or without holding an enquiry whether as assessee was resident or not, or an assessment, which on the facts as found would be patently unjustified, were all held to be in excess of jurisdiction and could therefore be impugned in a civil Court. The learned author, Mr. Sampath Iyengar has revised his opinion in the light of the decision in -- 'Raleigh Investment Co. Ltd. v. Governor-General-in-Council' AIR 1947 PC 78 (D) and expressed in his book (Income-tax Act IV Edition) thus

'The result now is that all objections to assessment, however fundamentally erroneous or based upon an ultra vires provision of the Act shall have to be raised before the appropriate authorities prescribed by the Act and be decided by them.'

The decision of the Privy Council is therefore the guiding principle to be followed in the interpretation of this aspect of law. Lord Uthwatt who delivered the opinion of the Judicial Committee, after citing the provisions of the Income-tax Act relating to the remedies available to the assessee, observes at p. 81 that

'effective and appropriate machinery is therefore provided by the Act itself, for the review, on grounds of law, of any assessment. It is in that setting that Section 67 has to be construed. In their Lordships' view, the construction of the section is clear. Under the Act. the Income-tax Officer is charged with the duty of assessing the total income of the assessee. The obvious meaning, & in their Lordships' opinion, the correct meaning of the phrase 'assessment made under the Act' is an assessment finding its origin in the activity of the assessing officer acting as such.

The circumstances that the assessing officer is taken into account, an ultra vires provision of the Act, is in this view immaterial in determining whether the assessment is 'made under the Act'. The phrase describes the provenance of the assessment; it does not relate to its accuracy in point of law. The use of the machinery provided by the Act, not the result of that use, is the test.'

3. In -- '52 Mys CCR 455 CE)', Venkataramana Rao C.J., while citing the above Privy Council decision in connection with the consideration of the limits of jurisdiction of the Controller under the Mysore House Rent Control Act. observes thus:

'His Lordship does not in any way throw any doubt upon the principle because he found in that case that it was within the competence of the income-tax authorities to go into the question of assessment and there was no lack of inherent jurisdiction to deal with the matter, and in exercising that jurisdiction, if they committed an error of law by acting upon a provision which is ultra vires their decision does not render it one outside the Act' (p. 465).

In view of the Privy Council decision, referred to above and also the decision in -- '52 Mys CCR 455 (E), the view expressed in -- 'AIR 1953 Mys 12 (A)' and -- 'AIR 1953 Mys 19 (C)', may require reconsideration.

4. Ordinarily, where a Statute creating a liability gives a special and particular remedy, and also expressly bars the jurisdiction of Courts in regard to the enforcement of that liability the remedies that are provided in the special statute must be followed and the party aggrieved is not entitled to agitate the same in any of the Courts. In an earlier case decided by me, it was held that the validity of assessment by the assessing officer cannot be questioned in a criminal Court vide --'Kotrappa v. Asst. Sales Tax officer' AIR 1951 Mys 37 (F). The opinion thus expressed was reiterated in a later decision reported in -- 'Rama Iyer v. Govt. of Mysore' AIR 1951 Mys 70 (G). Following the decision in -- 'AIR 1947 PC 78 (D)', I have held in the latter case that the criminal Courts have no jurisdiction to enter into an elaborate enquiry or question the validity of the assessment which must be done only through the appropriate machinery created by the Sales Tax Act itself. The principle laid down in these decisions conforms itself to the principle laid down

by the Privy Council decision discussed above, and I find no reason to change that view.

5. Section 22, Mysore Sales Tax Act is thus an express bar against calling the assessment into question in any Court. It runs thus:

'Save as provided in Section 16, no assessment made and no order passed under this Act or the rules, made thereunder by any assessing authority shall be called into question in any Court and save as is provided in Sections 14 and 15 no appeal or application for revision shall lie against any such assessment or order'.

Section 14 referred to in the above section relates to appeals against the assessing authority and Section 15 provides for revision by Government of the order in appeal and Section 16 enables the assessee to require a reference to the High Court for decision on a question of law stated and hence in the language of the decision in -- 'AIR 1947 PC 78 (D)':

'The Act contains machinery which enables an assessee to effectively raise the question whether or not a particular provision of the Act bearing on the assessment made upon him is ultra vires'...and

'jurisdiction to question assessment otherwise than by use of machinery expressly provided by the Act would appear to be inconsistent with the statutory obligation under Section 45 (Income-tax Act) to pay the tax arising by virtue of the assessment.'

6. I have therefore to re-affirm my earlier view in -- 'AIR 1951 Mys 70 (G)', that Section 22, Sales Tax Act is a bar to call in question, in a criminal Court, the validity of an order made by the assessing authority so long as it is one made under the Act in the sense discussed above.

7. In the present cases, the grievance merely is that the assessee is taxed under a provision resulting in a heavier burden than what ought to have been laid, under the proper provision applicable to the commodity which the petitioners are dealing in, and in the light of the foregoing discussion, such an objection against the enforceability of tax assessment cannot be raised, before a criminal Court.

8. Mr. Krishnappa next contended that, on the application of some of the cocoanut merchants, the Notification relating to the concessional rate of tax in regard to the sellers of fruits, was modified by Government by the addition of an explanation as, a result of which cocoanuts are removed from the category of fruits. The learned counsel argued that this subsequent amendment to the Government Notification implied that the Notification, as it stood before amendment, has led to much confusion resulting in protests by the petitioners that they are not liable to be taxed as dealers in commodities other than fruits. There appears to be some force in the contention inasmuch as the petitioners had reason to contend in the criminal Court that they are not liable for assessment as determined by the sales Tax Officer; but in the view I have taken, the criminal Court cannot give any relief and the petitioners should seek their remedy either before the appellate tribunal or the revision authority viz., the Government.

In my opinion, as the petitioners were led to believe at the relevant time that they are not liable for the tax imposed and in consequence raised a contention before the criminal Court; the offence in default of payment of tax levied deserves to be viewed with sympathy, especially as the tax is represented to have been already deposited. The sentence of fine of Rs. 100/- each appears to be rather too heavy in the circumstances of the cases. While therefore confirming the conviction, I reduce the fine to Rs. 10/- each; the default sentence will stand. With this modification, the petitions are dismissed.

9. Order accordingly.