

The State of Mysore Vs. the Bangalore Woollen, Cotton and Silk Mills, Company Ltd.

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Court : Karnataka

Decided On : Sep-22-1961

Reported in : [1962]13STC106(Kar)

Judge : Ahmed Ali Khan and ;H. Hombe Gowda, JJ.

Appeal No. : Appeal Petition No. 798/1956-57, Civil Revision Petition Nos. 164, 165, 166 and 167 of 1959

Appellant : The State of Mysore

Respondent : The Bangalore Woollen, Cotton and Silk Mills, Company Ltd.

Advocate for Def. : B. Seetharamiah, Adv.

Advocate for Pet/Ap. : B. Venkataswamy, Assistant Adv.-General

Judgement :

ORDER

Hombe Gowda, J.

1. These four revision petitions are directed against a common order passed by the Mysore Sales Tax Appellate Tribunal in Cases Nos. S.T.A. 116, S.T.A. 117, S.T.A. 118 and S.T.A. 119 of 1958 and relate to the levy of sales tax for four

quarters of the year 1955-56 by the Sales Tax Officer, First Circle, Bangalore, in respect of certain sales effected by the respondent-mills - the Bangalore Woollen, Cotton and Silk Mills Company Limited, Bangalore.

2. The respondent-mills are manufacturers of cotton, woollen and silk goods in Bangalore and they are registered dealers in those goods. They manufactured and sold silk goods from their mills. There was some dispute as to whether the silk goods manufactured by the respondent-mills were textiles woven on 'power-looms' or manufactured in a 'mill' for the purposes of levy of sales tax. The Commissioner of Commercial Taxes in Mysore, Bangalore, instructed the respondent-mills to collect sales tax on the silk goods sold by them at the rate of 1 anna per rupee on the basis that they were textile goods produced by a 'mill' pending the question, whether the contention of the respondents that they are power-loom goods is justified. Accordingly the respondent-mills collected from their attendant constituents sales tax at the rate of 1 anna per rupee on the silk goods they sold from their mills. In the turnovers submitted by the respondent-mills for the four quarters during the year 1955-56, they contended that these sales are of silk goods woven on power-looms and were subject to a levy of sales tax at the rate of 0-0-6 per rupee and not at the rate of 1 anna per rupee and since they have remitted the money they had collected at a higher rate, i.e., at 0-1-0 per rupee the Sales Tax Authorities should refund the excess of the amount.

3. The respondent-mills is also running a stores in the name and style of 'Works Peoples Stores' and through that stores they have been selling goods to their workmen employed in their mills without any profit. In so far as the turnover in the business of the 'Works Peoples Stores' are concerned, the respondent-mills contended that it was not a business that was being carried on by the respondent-mills in the course of their business; that they were running the said stores solely to help its employees to enable them to purchase the goods at a cheaper rate than they would pay for it in open market and it amounted to an 'amenity'; that the respondent-mills was not making any profit whatsoever from those transactions and, therefore, they were not liable to pay any sales tax on those goods sold by the 'Works Peoples Stroes.'

4. Thirdly, the respondent-mills had disposed of some unserviceable goods like waste cotton, useless ropes, scrap iron, worn out and broken parts of machinery, old papers, tubes and unserviceable metal coils etc. during the relevant period. In so far as the amount realised by the sales of these sundries are concerned, it was contended by the respondent-mills that they had not sold these sundries in the course of their business and as such those sale transactions were not liable to any taxation.

5. The Sales Tax Officer rejected all these three contentions of the respondent-mills. He held that so long as the respondent-mills had collected the sales tax at the rate of 1 anna per rupee from their customers on the silk goods sold to them they were not entitled to have it refunded. In so far as the second contention of the respondent-mills is concerned, the Sales Tax Officer was of the opinion that the accounts kept in the 'Works Peoples Stores' disclosed that they had made a net profit of Rs. 10,000 for the entire year in question and as such it cannot be said that it was not a business carried on by the respondent-mills with a profit-motive and, therefore, the turnover of the 'Works Peoples Stores' was also liable to be taxed. As regards the claim of the respondent-mills for exemption in so far as sales of 'sundries' were concerned, the learned Sales Tax Officer was of the opinion that it should be deemed as a business carried on by the respondent-mills inasmuch as these unserviceable 'sundries' were sold by them in huge quantities and they had realised large sums of money from out of such sale transactions. Having reached these conclusions the learned Sales Tax Officer, I Circle, Bangalore, levied sales tax on all these articles for the four quarters referred to already accepting the turnovers submitted by the respondent-mills.

6. The respondent-mills being aggrieved by the assessment orders for these four quarters preferred four different appeals before the Deputy Commissioner of Commercial Taxes, Bangalore Division, Bangalore. It was urged before the learned Deputy Commissioner of Commercial Taxes that the State was entitled to claim from the appellants only the legally leviable amount of sales tax and that because the respondent-mills had collected sales tax at the rate of 1 anna per rupee, while actually the goods sold by them were subject to a sales tax of 0-0-6 per rupee, the State was not entitled to claim the excess amount. It was submitted

that the respondent-mills had undertaken to refund the excess amount collected to their customers. In support of this contention, the respondent-mills relied on the decision reported in *Minerva Mills and Another v. State of Mysore* ([1956] 7 S.T.C. 148.). The learned Deputy Commissioner of Commercial Taxes rejected this contention. He observed in the course of his order that though this Court had held that the State was not entitled to claim any amount collected in excess of the tax legally leviable in *Minerva Mills and Another v. State of Mysore* ([1956] 7 S.T.C. 148.), the same had not been finally accepted by the Supreme Court as the matter had been remanded for reconsideration with regard to another matter. He was of the opinion that the above decision of this Court was not binding on him as it had not become final. He, therefore, rejected the claim of the respondent-mills with regard to the first contention, viz., refund of the sales tax collected by them in excess for the silk goods manufactured and sold by them to its constituents.

7. In so far as the business carried on by the respondent-mills in the 'Works Peoples Stores' is concerned, the learned Deputy Commissioner agreed with the conclusions reached by the Sales Tax Officer that it was a business carried on by the respondent-mills with a profit-motive and as such the turnover was subject to a levy of tax. He also held that the sale of the 'sundries' was a regular feature of the activities of the respondent-mills and as such those sale transactions were also liable to sales tax. In the result the learned Deputy Commissioner dismissed all the four appeals by a common order passed on 5th June, 1958.

8. The respondent-mills preferred four second appeals to the Mysore Sales Tax Appellate Tribunal, Bangalore. The Tribunal accepted all the contentions advanced on behalf of the respondent-mills. It held that the claim for refund of the amount in excess of 0-0-6 per rupee which had been collected and remitted by the appellant was justified as admittedly the silk goods sold by them were goods manufactured on 'power-looms'. The Tribunal was of the opinion that the appellants were bound to refund the same to their constituents in case of demand from them. The Tribunal was further of the opinion that in so far as the transaction carried on in the 'Works Peoples Stores' was concerned, it was only an 'amenity' specifically meant for the employees of their mills and those transactions could not constitute a business activity carried on by the respondent-mills with any profit-

motive, though in that particular year there was a small profit earned by the mills and on that basis held that the sale transactions were not taxable. In coming to these conclusions, the Tribunal relied on a decision of this High Court in *Davanagere Cotton Mills Ltd. v. State of Mysore and Another* ([1957] 8 S.T.C. 793; A.I.R. 1957 Mys. 72.). Having reached this conclusion, the Tribunal allowed the claim of the respondent-mills for exemption in so far as the sale transactions in the 'Works Peoples Stores' were concerned. As regards the 'sundries' sold by the respondent-mills, the Tribunal was of the opinion that it was not a business activity of selling these items carried on by the mills and as such those transactions did not attract any levy of sales tax. In other words, the Tribunal accepted the contentions of the respondent-mills in full and allowed the appeals filed by the respondent-mills. It is against this order of the Tribunal, the State of Mysore has preferred these four revision petitions before us.

9. Sri Venkataswamy, the learned High Court Government Pleader, who argued the case on behalf of the State, contended before us that in so far as the sale of silk goods are concerned, when once the respondent-mills had collected the tax from its constituents as 'sales tax' the State was entitled to claim and get the same from them. He contended that the respondent-mills was not entitled to claim any refund of the excess amount. When the learned High Court Government Pleader was confronted with the decision of this High Court reported in *Minerva Mills Ltd. v. State of Mysore* ([1956] 7 S.T.C. 148.), he was not able to explain satisfactorily as to how the instant case did not fall within the principles enunciated in the above case. He submitted that the said decision had been rendered by the former High Court of Mysore (before States Reorganisation) and as the same was not binding on this Court, we should consider the point afresh. One of us was a party to the above decision. The said decision had been taken in appeal to the Supreme Court of India, and the Supreme Court did not express any opinion contrary to the opinion of this Court. In these circumstances, we do not find any ground to dissent from the opinion expressed in the above-said case. I am, therefore, of the opinion that the conclusions reached by the Tribunal that the respondent-mills is entitled to the refund of the sales tax paid by them in excess of 0-0-6 in the rupee is correct and cannot be interfered with.

10. In so far as the turnover relating to the business carried on in the 'Works Peoples Stores' is concerned, it cannot be reasonably urged that the conclusion reached by the Tribunal is erroneous. This Court has held in the decision reported in *Davanagere Cotton Mills v. State* ([1957] 8 S.T.C. 793; A.I.R. 1957 Mys. 72.), that the business carried on by a textile mill in running a canteen for the benefit of its employees is not a business activity of the mills and the turnover of the canteen is not liable for taxation. The same principles apply to the 'Works Peoples Stores' transactions. The conclusions reached by the Tribunal in this respect is, therefore, correct and is not liable to be interfered with.

11. In so far as the last item is concerned, the dispute relates to the sale of unserviceable 'sundries' by the respondent-mills. It is strenuously argued by Shri Venkataswamy, the learned High Court Government Pleader, that the same is certainly a business activity of the respondent-mills and the turnover in respect of these sale transactions is liable to be taxed. In support of this contention, the learned Government Pleader relied on a decision of the Bombay High Court reported in *Aryodaya Spinning and Weaving Co., Ltd. v. State of Bombay* ([1960] 11 S.T.C. 141.). No doubt a cursory perusal of the above decision appears to support the contention urged by the learned Government Pleader, but the facts of that case are easily distinguishable. In that case the assesseees, who were carrying on the business of manufacturing cotton textiles and yarn, had applied for registration as dealers stating that they were carrying on the business of selling yarn, cloth, cotton, cotton waste, stores etc., and they had been accordingly registered. In these circumstances, their Lordships of the Bombay High Court held that it was quite possible to readily infer that the transactions of sale were in the course of the business of the assesseees. But in the instant case before us, it is not even suggested that the respondent-mills had got registered itself as a 'dealer' for carrying on the business of selling waste cotton, useless ropes, scrap iron, worn out and broken part of machinery, old papers, tubes and unserviceable metal coils etc., as in the Bombay case referred to above. Shri Venkataswamy fairly conceded that in so far as useless ropes, scrap iron, worn out and broken parts of machinery, old papers etc., are concerned, it cannot be reasonably urged that the respondent-mills is carrying on the business of selling these goods. His only contention is that in so far as waste cotton and waste yarn are concerned, it can

reasonably be presumed that the respondent-mills is carrying on the business of selling those goods as they manufacture them on a large scale and these transactions have fetched huge sums of money to the mills. The mere fact that these sales are for a large sum of money in a mill of the magnitude of the respondent-company by itself cannot be a criterion to hold that it is an item of business activity carried on by the said mills. The Tribunal has observed in the course of its order that the articles of association of the respondent-mills make it clear that their objects are only to manufacture and sell cotton, woollen and silk goods and nothing more. In these circumstances, we are of the opinion that the Tribunal was perfectly justified in coming to the conclusion that the sale of sundries effected by the respondent-mills are not liable for any taxation.

12. Thus all the three contentions raised by Shri Venkataswamy, the learned High Court Government Pleader on behalf of the State, are answered against the State. No other point was raised before us in these revision petitions. In the result these revision petitions fail for the reasons stated above and are dismissed with costs.

13. Petitions dismissed.

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