Kishindas Agencies Vs. the State of Mysore

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Court : Karnataka

Decided On : Oct-30-1973

Reported in : ILR1974KAR446; 1974(1)KarLJ149; [1974]33STC65(Kar)

Judge : G.K. Govinda Bhat, C.J. and ;M.K. Srinivasa Iyengar, J.

Acts : Mysore Sales Tax Act, 1957 - Sections 5(1), 5(3A), 21(2) and 23(1); Mysore Act, 1966

Appeal No. : S.T.R.P. Nos. 42 and 43 of 1973

Appellant : Kishindas Agencies

Respondent : The State of Mysore

Advocate for Def. : M.P. Chandrakantaraj Urs, Government Advocate

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :
ORDER

Govinda Bhat, C.J.

1. These revision petitions preferred by an assessee under section 23(1) of the Mysore Sales Tax Act, 1957, hereinafter called the Act, relate to the assessment years 1967-68 and 1968-69. The assessee manufactures 'felt washers', which are used as components in the manufacture of 'micro filters'. During the assessment

years the assessee sold the 'felt washers', manufactured by him to M/s. Motor Industries Co. for manufacture of 'micro filters'. Before the assessing authority, the assessee claimed that on his turnover relating to sales of 'felt washers' he is liable to pay tax only at the concessional rate provided under section 5(3A) of the Act, which claim was accepted by the Additional Commercial Tax Officer who passed the assessment orders.

2. However, the Deputy Commissioner of Commercial Taxes in exercise of the powers conferred by section 21(2) of the Act revised the orders of the Additional Commercial Tax Officer and held that the assessee is not entitled to the benefit of section 5(3A), but is liable to pay tax at the rate provided under section 5(1). Appeals preferred by the assessee against the said orders to the Mysore Sales Tax Appellate Tribunal having been dismissed, he has preferred the above revision petitions.

3. It was contended by Sri Sarangan, learned counsel for the assessee, that the view of the law on the basis of which the Commissioner revised the orders of the Additional Commercial Tax Officer is erroneous and that the assessee is entitled to the concessional rate of tax under section 5(3A). The question for decision in these revision petitions is, whether the assessee is entitled to the benefit of section 5(3A) of the Act. The said sub-section reads :

'5. (3A) Notwithstanding anything contained in sub-section (1) or sub-section (3), the tax payable by a dealer in respect of any sale of goods mentioned in the Second Schedule by such dealer to a registered dealer for use by the latter as component part of any other goods mentioned in that schedule, which he intends to manufacture inside the State for sale, shall be at the rate of two per cent or the rate specified in the Second Schedule in respect of such goods whichever is lower on the turnover relating to such sale : (Proviso omitted as unnecessary.)

Explanation. - For the purpose of this sub-section, 'component part' means 'an article which forms an identifiable constituent of the finished product and which along with others goes to make up the finished product'.'

Section 5(3A) was inserted in the Act by Mysore Act 3 of 1966; obviously it was enacted in order to encourage the setting up of ancillary industries in the State. In modern industrial countries, it is common knowledge that manufacturers of finished products do not manufacture all the component parts themselves. They purchase some of the component parts required by them ancillary industries, e.g., a refrigerator or a motor car consists of several component parts. A manufacturer of refrigerators or cars will not be manufacturing all the component parts, but will buy the same from manufacturers of ancillary industries.

4. Under the scheme of the Act, a manufacturer of component parts who sells his articles of manufacture to registered dealers in the State has to satisfy two conditions in order to entitle him to the benefit of the concessional rate provided under section 5(3A). They are :

(1) That the component parts sold by the dealer must be one of the goods mentioned in the Second Schedule of the Act.

(2) That the sale must be to a manufacturer who also manufactures any of the goods mentioned in the said schedule.

The expression 'component part', according to the explanation means, an article which forms an identifiable constituent of the finished product and which along with others goes to make up the finished product. In the instant case, the Motor Industries Company who purchased 'felt washers' manufactured by the assessee are the manufacturers of 'micro filters'. It is common ground that 'micro filters' form an identifiable constituent of motor vehicles and, therefore, come under serial No. 72 of the Second Schedule which reads : 'Component parts of motor vehicles.' 'Micro filters' manufactured by the Motor Industries Company, therefore, fall within serial No. 72 of the Second Schedule. 'Felt washers' manufactured by the assessee are not component parts of motor vehicles. Component parts of the articles falling under serial No. 72 of the Second Schedule do not come either under serial No. 72 or under any other item in the Second Schedule. They cannot be brought under serial No. 72 because they cannot be identified as parts of a motor vehicle at that stage of manufacture. Sri Sarangan, learned counsel for the assessee, contended that 'felt washers' come under serial No. 73 of the Second

Schedule. This court in A. K. Swamy and Brothers v. State of Mysore ([1970] 25 S.T.C. 227), has held that 'from the language of serial No. 73 of the Second Schedule, it appears to us that the Legislature had in mind the case of articles which are ordinarily used for one purpose, but by alteration made are used for a different purpose, viz., as parts and accessories of motor vehicles, and it is to such articles that serial No. 73 of the Second Schedule applies'. In view of the said decision, the said contention of the learned counsel has to be rejected.

5. From the scheme of the Act it appears to us that the Act does not contemplate the grant of the benefit of section 5(3A) to a dealer who manufactures and sells a component part of a component part of a finished product. This view of ours finds support from serial Nos. 52, 53 and 54 of the Second Schedule. Serial No. 52 refers to refrigerators, air-conditioning plants, component parts of refrigerators or air-conditioning plants; serial No. 53 refers to wireless reception instruments and apparatus and component parts thereof including all electrical valves, accumulators, radio dry cell batteries, amplifiers and loud-speakers which are not specially designed for purposes other than wireless reception; serial No. 54 refer to radio-gramophones, including component parts of radio-gramophones. A manufacturer of a component part a refrigerator selling his article to a manufacturer of refrigerators is entitled to the benefits of section 5(3A) as both the conditions required by the said sub-section are satisfied. Similarly, a manufacturer of component parts of a wireless reception instrument is entitled to the benefits of the concessional rate; but a manufacturer who manufactures component parts of component parts of either refrigerators or wireless reception instruments is not entitled to the concessional rate. In the instant case, condition No. 1 required to be satisfied is not satisfied as the assessee's articles of manufacture do not answer the description of the goods mentioned in the Second Schedule of the Act. Therefore, the decision of the Tribunal is right.

6. Accordingly, these revision petitions fail and are dismissed. In the circumstances, no costs.

7. Petitions dismissed.