

C.B. Basappa Vs. State of Mysore

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Court : Karnataka

Decided On : Sep-09-1965

Reported in : [1966]17STC5(Kar)

Judge : C. Honniah and ;K.S. Hegde, JJ.

Acts : [Central Sales Tax Act, 1956](#) - Sections 6, 6(1), 8, 8(1), 8(2), 8(4) and 9(3)

Appeal No. : S.T.R.P. No. 48 of 1965 in S.T.A. No. 93 of 62-63

Appellant : C.B. Basappa

Respondent : State of Mysore

Advocate for Def. : G.B. Kulkarni, High Court Government Pleader

Advocate for Pet/Ap. : K. Srinivasan, Adv.

Judgement :

ORDER

Hegde, J.

1. This is a revision petition under section 23 of the Mysore Sales Tax Act, 1957, read with section 9(3) of the [Central Sales Tax Act, 1956](#), which will be hereinafter referred to as the 'Act'. The question of law raised in this revision petition is, 'whether inter-State sales to unregistered dealers fall within section 8(2) of the

Act'.

2. The petitioner is a registered dealer in this State. During the assessment year 1958-59 (from 1st July, 1958, to 30th June, 1959) the petitioner sold certain goods to some dealers in Patna and Calcutta. The goods sold by him are not declared goods. The concerned dealers in Calcutta and Patna were not registered dealers. The question for decision is whether the turnover relating to those sales are liable to be taxed under section 6 read with section 8(2) of the Act. The Sales Tax Authorities as well as the Sales Tax Appellate Tribunal have come to the conclusion that the turnover in question is liable to be taxed under section 6 in accordance with the rates prescribed in section 8(2). Aggrieved by that decision, the assessee has come up in revision to this Court.

3. To answer the question of law raised for decision, it is necessary to refer to the relevant provisions of the Act. The charging section in the Act is section 6. For our present purpose, only sub-section (1) of section 6 is relevant. That section reads :-

'Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales effected by him in the course of inter-State trade or commerce during any year on and from the date so notified.'

4. If this section is read by itself, excluding from consideration the other provisions in the Act, it is seen that all sales effected in the course of inter-State trade are brought within the net of taxation. But then this section itself says that the provisions contained in it are 'subject to the other provisions contained in the Act'. Therefore, in finding out whether a turnover relating to a particular transaction is subject to tax, one has not only to read section 6 but also the other relevant provisions in the Act. Mr. K. Srinivasan, the learned counsel for the assessee is right in his contention that we should not read section 6 as levying tax on all sales effected in the course of inter-State trade and thereafter see whether any of the those transactions are exempted under one or the other provisions of the Act. The correct way of reading section 6 is as laid down by the Supreme Court in *The State*

of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons : [1965]2SCR129 .
Their Lordships interpreting section 6 observed :

'Section 6 of the Central Act is the charging section. Subject to the other provisions contained in the Act, every dealer is liable to pay tax under the Act on all sales effected by him. It will be noticed that the liability is not absolute but subject to the other provisions of the Act. If the effect of another provision is to take away the liability, effect will have to be given to it. Section 8 prescribes the rates of tax to be levied. It is common ground that section 8(1) does not apply to the facts of the case, but the proviso is important as it indicates that in some cases falling within the proviso the rate may be nil. In other words, notwithstanding section 6, the dealer may not be liable to pay any tax if he comes within the proviso to section 8(1). It follows that the scheme of the Act is not that every transaction in inter-State trade must bear some tax.'

Up till this stage, we are in agreement with Mr. Srinivasan.

5. The next question for consideration is whether the turnover with which we are concerned in this case falls within the ambit of section 8(2). It is first necessary to refer to section 8(1). That section says.

'Every dealer, who is the course of inter-State trade or commerce -

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be one per cent., of his turnover.'

6. In view of this provision, all sales effected to the Government, whatever the goods sold may be, fall within section 8(1). Further, all sales made to registered dealers other than the Government, of goods of the description referred to in sub-section (3), are also brought within section 8(1). Now before going to section 8(2), it will be convenient to refer to section 8(4). That section says :

'The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner -

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.'

7. The effect of section 8(4) is that all transactions which would have ordinarily come within section 8(1) are excluded from the scope of that provision if the documents mentioned in 8(4), i.e., the 'C' form or 'D' form as the case may be is not produced before the appropriate authority. Therefore, before a transaction can come within section 8(1) the following requirements have to be fulfilled :

(1) It must be a sale to the Government or a sale to a registered dealer other than the Government goods of the description referred to in sub-section (3) and

(2) in respect of the sale to the Government, the registered dealer must have produced the relevant 'D' form and in respect of sale to a registered dealer other than the Government, he must have produced the relevant 'C' form.

8. If all these requirements are not fulfilled, the transaction must be held not to fall within section 8(1). Now we shall examine section 8(2). It says :

'The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1) -

(a) in the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of seven per cent., or at the rate applicable to the sale or purchase of such goods

inside the appropriate State whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.'

9. Before interpreting section 8(2) we must remember the fact that section 8 is not a levy section. That section as its marginal note indicates is a provision prescribing the rates. The rates prescribed therein will only be applicable if the transaction is subject to tax under section 6.

10. Now we shall proceed to interpret the true scope of section 8(2). On a plain reading of that section, it appears to us that all transactions which do not fall within the ambit of section 8(1) are taken in and included in section 8(2). As mentioned earlier, section 8 deals with the rates and it does not concern itself either with the levy or with any exemption thereof. Section 8(2) plainly says :

'That the tax payable by any dealer on his turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1) ...'

11. In our opinion all transactions which are subject to tax under section 6 are divided into two categories by section 8. A part of those transactions come within section 8(1) and the remaining part falls within section 8(2), and no part is exempt from tax. If that be the true construction of section 8, which we think it is, then it follows that whatever transaction does not fall within section 8(1) has to be considered as falling within section 8(2).

12. Mr. Srinivasan, the learned counsel for the assessee, wanted us to interpret section 8(2) as to include only those transactions not falling within section 8(1) but not those that are excluded by section 8(4). We are unable to accept that contention. That contention runs counter to the plain language of section 8(2) which specifically says that all turnover relating to inter-State trade not falling within section 8(1) falls within section 8(2). If by non-compliance with the requirements of section 8(4) any transaction is excluded from section 8(1) it

necessarily follows that the transaction falls within section 8(2). If it is otherwise a dealer who does not comply with section 8(4) will be in a better position than the one who complies with it. That could never be the position. The relevant provisions do not lend themselves to such an artificial construction.

13. The next contention urged by Mr. Srinivasan was that section 8(2) refers to 'goods' and not to 'sales'. According to him, section 8(2) takes in only turnover relating to goods which fall within section 8(4). There is no room for such a construction. In our opinion, the language of section 8(2) is quite plain and what it says is that any turnover not falling within section 8(1) comes within section 8(2). Section 8(2) deals with neither 'the sales' nor 'the goods' but with 'the turnovers'.

14. Mr. Srinivasan contended that if two interpretations can be placed on a provision, that interpretation which favours the subject should be accepted. In support of that contention, he invited our attention to certain decisions. We are in full agreement with the principle. But in the instant case, as mentioned earlier, we see no possibility of two interpretations much less two reasonable interpretations. As stated earlier, in our opinion, the language of section 8(2) is plain and unambiguous. We are also in agreement with Mr. Srinivasan that in interpreting a fiscal statute, we must take the words as they stand and not run after the presumed intention of the Legislature. The Court must look at the language of the provision and give it the meaning which it ordinarily bears. That is what we have done in this case.

15. While interpreting section 8(2) Mr. Srinivasan wanted us to bear in mind the constitutional prohibition inhibiting levy of sales tax on any sale to the consumer in the course of inter-State trade. He contended that if we hold that all transactions which do not fall within section 8(1) fall within section 8(2), then it would mean that even inter-State sales to a consumer will be brought within the scope of section 8(2) and such an interpretation would be violative of the Constitution. We have not thought it necessary to go into that question because in the instant case, the petitioner before us sold goods to dealers and not to consumers. Therefore, it is unnecessary to consider whether section 8(2) includes transactions prohibited by the Constitution. If it does, about which we say nothing, to the extent it violates any

constitutional mandate the Constitution prevails.

16. For the reasons mentioned above, our answer to the question of law raised by Mr. Srinivasan is that the inter-State sales with which we are concerned in this case are liable to tax under section 6 read with section 8(2) of the Act. In the result, this petition fails and the same is dismissed. No costs.

17. Petition dismissed.

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