

K. Hajee Khader Bacha Sahib and ors. Vs. Commercial Tax Officer, Ii Circle, Bangalore and ors.

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Court : Karnataka

Decided On : Jul-27-1964

Reported in : [1965]16STC450(Kar)

Judge : G.K. Govinda Bhat and ;K.S. Hegde, JJ.

Acts : Mysore Sales Tax Act, 1957 - Sections 18(3); Madras General Sales Tax Act, 1939 - Sections 8-B(2) and 11(2)

Appeal No. : Writ petition Nos. 2135, 2193, 2194, 2491, 2616, 2617, 2632 of 1963 and Nos. 138 and 827 of 1964

Appellant : K. Hajee Khader Bacha Sahib and ors.

Respondent : Commercial Tax Officer, Ii Circle, Bangalore and ors.

Advocate for Def. : R. S. Mahendra, Government Pleader

Advocate for Pet/Ap. : K. Srinivasan, ;D.R. Venkatesh Iyer and ;B.V. Katageri, Advs.

Judgement :

ORDER

Hegde, J.

1. In these petitions, the validity of Section 18(3) of the Mysore Sales Tax Act, 1957, as amended by Mysore Act No. 9 of 1964, is challenged as being beyond the legislative competence of the State Legislature. The amendments effected to that section read :

'In sub-section (3) of section 18 of the principal Act -

(i) for the words 'by way of the tax' wherever they occur, the words 'by way of tax or purporting to be by way of tax' shall be and shall always be deemed to have been substituted;

(ii) after the words 'payable by him', the words 'whether or not any tax is due from such person or dealer under this Act in respect of the transaction in which he collects such amount' shall be and shall always be deemed to have been inserted.'

2. This amendment came to be made in view of the decision of this Court in M. Kuppuswamy Naicker v. Commercial Tax Officer, First Circle, Bangalore and Another , wherein this Court held that under sub-section (3) of section 18 of the Mysore Sales Tax Act, 1957, as then in force, only when any collection 'by way of the tax' in contravention of the provisions of sub-section (1) or (2) is made, that a dealer is liable to pay over that amount to the State and not otherwise. Collections of certain sums of money as sales tax by a registered dealer from his customers in respect of transactions of sale not exigible to tax, fall wholly outside the scope of the Act. Section 18(3) therefore does not apply to such collections and the Revenue is not entitled to take

action under that sub-section. The validity of a section similar to the amended section 18(3) of the Mysore Sales Tax Act, 1957, came up for consideration before the Supreme Court in R. Abdul Quader and Co. v. Sales Tax Officer, Second Circle, Hyderabad : [1964]6SCR867 . Therein the Supreme Court had to consider the correctness of the decision of the Madras High Court in Indian Aluminium Co. v. The State of Madras ([1962] 13 S.T.C. 967), which decision had upheld a provision similar to the one that we are now considering. Dealing with that decision, this is what the Supreme Court held :

'The respondent further relies on a decision of the Madras High Court in Indian Aluminium Co. v. The State of Madras ([1962] 13 S.T.C. 967). That decision was with respect to section 8-B of the Madras General Sales Tax Act of 1939 as amended by Madras Act 1 of 1957. Though the words in section 8-B(2) were not exactly the same as the words in section 11(2), with which we are concerned here, the provision in substance was to the same effect as section 11(2). In view of what we have said above, that decision must be held to be incorrect.'

3. The Supreme Court came to the conclusion that the State Legislatures have no legislative competence to convert into tax what is not really a 'tax.'

4. In view of that decision, these petitions have to be allowed. We hold that the amended section 18(3) of the Act is unconstitutional as the Legislature had no competence to enact the same. As a consequence of that decision, we have to further hold that the impost made in pursuance of that provision is also invalid. Further, the demands made in that connection are also illegal demands. The impost made, if any, under section 18(3) or the demands made under that provision (that will not include any sales tax validly levied) and impunged in these proceedings are hereby quashed. If any of the petitioners have paid any money in pursuance of any demand made under amended section 18(3), and challenged in these proceedings the State shall refund the same. The petitioners are entitled to their costs. Advocate's fee Rs. 100.

5. Petitions allowed.

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