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Court : Karnataka

Decided On : Feb-27-1967

Reported in : (1967)1MysLJ440; [1967]20STC20(Kar)

Judge : A. Narayana Pai and ;B. Venkataswami, JJ.

Acts : Mysore Sales Tax Act; Central Sales Tax Act; Mysore Sales Tax Rules, 1957 - Rule 20

Appeal No. : Writ Petition No. 269 of 1967

Appellant : Cotmac Private Ltd.

Respondent : Commercial Tax Officer, 1st Circle, Hubli and anr.

Advocate for Def. : G.S. Shantaraju, Adv. for the High Court Special Government Pleader

Advocate for Pet/Ap. : P. Venkataramana, Adv. for G.S. Ullal

Judgement :
ORDER

Narayana Pai, J.

1. The facts which are not disputed and which are sufficient for the disposal of the only prayer in this writ petition are the following :-

2. The petitioner is an assessee to sales tax both under the Mysore Sales Tax Act and under the Central Sales Tax Act. For the year ended 31st March, 1962, the Commercial Tax Officer, 1st Circle, Hubli, the 1st respondent herein, made an order of assessment under the Central Sales Tax Act on 31st March, 1966, and also an order of the same date under the Mysore Sales Tax Act. In the former he held that a sum of Rs. 20,936.02 was refundable to the petitioner. Nevertheless he did not direct the payment or refund thereof to the petitioner; instead he made a direction in the second order that the said sum will be adjusted towards certain amounts held to be due by the petitioner for and on account of the sales tax payable under the Mysore Sales Tax Act.

3. The petitioner complains that the adjustment so proposed by the 1st respondent is not in accordance with law and that he having declined to give effect to his own order of refund, this Court should issue a mandamus directing him to make the refund.

4. The only answer made on behalf of the State is the power under the proviso to rule 20 of the Mysore Sales Tax Rules, 1957, which reads :

'Provided that the excess tax refundable to the dealer may be adjusted towards other amount, if any, due by him under the Act'.

Now this rule is a rule applicable primarily to assessments under the State Act. Secondly, both the excess tax refundable as well as the amount against which it has to be adjusted are amounts either paid or due under the State Act. The sum of Rs. 20,936.02 which is the subject of this writ petition is not paid as tax under the Mysore Act at all and hence not an amount which can be said to have become refundable under rule 20 as an excess of deposit over the tax liability calculated under the State Act. Further, even if the Rule is regarded as available as part of the machinery for the purposes of levy and collection of tax under the Central Act, the tax refundable as well as the tax against which the said refundable tax is to be or may be adjusted should both be Central tax or tax under the Central Act. It is not possible, in our opinion, to adjust the tax refundable under one Act against tax due under another Act. The fact that even the tax levied under the Central Act is ultimately intended for State purposes and may therefore get directly credited into

the Consolidated Fund of the State, would make no difference, because the two taxes are distinct and different, and levied under two different statutes, one of the State Legislature and the other of Parliament.

5. We, therefore, make an order directing that Rs. 20,936.02 found as excess paid in the order of the 1st respondent made under the Central Sales Tax Act be refunded to the petitioner and further that the amount of Mysore sales tax determined as payable under the order of the 1st respondent dated 31st March, 1966, for the period 1st April, 1961 to 31st March, 1962, be re-calculated accordingly and a fresh demand issued to him.

6. Ordered accordingly.

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