

The State of Mysore Vs. A. Vamana

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Court : Karnataka

Decided On : Jan-13-1970

Reported in : [1973]32STC520(Kar)

Judge : B. Venkataswami and ;G.K. Govinda Bhat, JJ.

Acts : [Central Sales Tax Act, 1956](#) - Sections 8(3), 10 and 10A

Appeal No. : S.T.R.P. No. 25 of 1969

Appellant : The State of Mysore

Respondent : A. Vamana

Advocate for Def. : P. Vasudeva Aithal, Adv.

Advocate for Pet/Ap. : S.R. Rajasekhara Murthy, Government Pleader

Judgement :

ORDER

Govinda Bhat, J.

1. This is a sales tax revision petition preferred by the State under section 23(1) of the Mysore Sales Tax Act, 1957, against the order of the Sales Tax Appellate Tribunal in S.T.A. No. 160 of 1968. The respondent, who is the assessee, is a firm registered under the Mysore Sales Tax Act, 1957, as a dealer and was carrying on

the business of retreading tyres. The assessee was authorised to purchase certain goods for resale under the [Central Sales Tax Act, 1956](#). The assessee, during the assessment year 1962-63, used the said articles for retreading tyres which, according to the assessing authority, amounts to a works contract and is not in the nature of manufacture. Therefore, a show cause notice was issued proposing to levy a penalty of Rs. 2,452.10 since, in the opinion of the assessing authority, the assessee had not made use of the materials for the purpose of manufacture. The assessee appeared before the assessing authority and filed written objections. After hearing the assessee, the assessing authority imposed a penalty as provided under section 10-A of the Central Sales Tax Act. Against the said order, the assessee preferred an appeal to the Assistant Commissioner of Commercial Taxes, South Kanara and Coorg District, Mangalore, and the said appeal was dismissed. Against the said order, the assessee preferred an appeal to the Sales Tax Appellate Tribunal, which by its order dated 23rd December, 1968, allowed the appeal holding that there was reasonable excuse for failure to use the goods for manufacture. Aggrieved by the said order, the State has preferred the above revision petition.

2. The question of law that arises on the order of the Tribunal is, whether, on the facts and in the circumstances of the case, the Tribunal's view that the assessee had reasonable excuse for failure to use the goods for the purpose for which they were bought, is correct in law. The assessee could use the goods either for resale or manufacture. He used the goods for retreading tyres on the view that retreading amounts to manufacture. As stated by the Tribunal, the department, during the previous years, had taken the view that retreading of tyres amounts to manufacture of tyres for the purpose of resale; but that view was changed during the assessment year when they took the view that retreading does not amount to manufacture of goods for sale, but a works contract. Since the department itself had taken the view during the previous years that retreading of tyres amounts to manufacture of goods, there was reasonable excuse for the assessee to use the goods for retreading. Penalty under section 10(d) of the [Central Sales Tax Act, 1956](#), is attracted if, after purchasing any goods for any of the purposes specified in clause (b) of sub-section (3) of section 8, the assessee fails without any reasonable excuse to make use of the goods for any such purpose. In the view of

the Tribunal the fact that during the previous years the department had considered retreading as amounting to manufacture was a reasonable excuse. That view of the Tribunal, in our opinion, was right and cannot be considered as erroneous. Therefore, we hold that, on the facts and in the circumstances of the case, the Tribunal's view that the assessee had reasonable excuse for failure to use the goods for the purpose for which they were bought, is correct in law.

3. In the result, the sales tax revision petition fails and is dismissed with costs. Advocate's fee Rs. 100.

4. Petition dismissed.

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