D. Cawasji and Co. Vs. the State of Mysore and ors.

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Court : Karnataka

Decided On : Jul-06-1964

Reported in : (1964)1MysLJ510; [1964]15STC894(Kar)

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

Acts : Constitution of India - Article 226; Mysore Sales Tax Act, 1957 - Sections 2, 5(3), 18(3) and 19; Mysore Sales Tax (Amendment) Act, 1964 - Sections 6-A

Appeal No. : Writ Petition No. 1094 of 1964

Appellant : D. Cawasji and Co.

Respondent : The State of Mysore and ors.

Advocate for Def. : T. Krishna Rao, Advocate-General

Advocate for Pet/Ap. : D.R. Venkatesha Iyer, Adv.

Judgement :

Hegde, J.

1. In this petition under Article 226 of the Constitution, the petitioner prays for a declaration that the State of Mysore has no authority to levy and collect sales tax under the Mysore Sales Tax Act, 1957, to be hereinafter referred to as the 'Act', on its sales of arrack and special liquor and that the proviso to section 5(3)(a) read

with section 19 of the Act, purporting to give such an authority, is beyond the competency of the State Legislature and unconstitutional on the grounds more fully set out in the affidavit filed in support of the petition.

2. This petition came up for admission before us on 26th June, 1964. Act that time, in the light of the argument advanced before us, we concentrated our attention only on section 19 of the Act. It was urged by the learned counsel for the petitioner that section 19 does not purport to levy any tax on the sales in question; it merely authorises the State Government to collect tax on those sales on the assumption that those sales are exigible to tax; but that assumption has no legal basis. If we read section 19 by itself as we mistakenly did at that time, there is some support for this contention. Hence, we thought it desirable to hear the learned Advocate-General even before we admitted this petition, lest the admission of this case should without any purpose, provoke others, similarly placed, to rush to this Court with writ petitions. We accordingly notified the learned Advocate-General. This day, we have heard Sri D. R. Venkatesha Iyer, the learned counsel for the petitioner as well as the learned Advocate-General. We have come to the conclusion that there are no merits in this petition. We shall presently state our reasons for the conclusion reached by us.

3. The petitioner is a registered partnership firm with its principal office at Bangalore. It is a licensed vendor of arrack in the City of Bangalore. In the course of its business, it has purchased and is purchasing considerable quantity of arrack from the State Government. The State Government is levying tax on its sales of arrack to the petitioner under the proviso to section 5(3)(a) of the Act, and is collecting the same under section 19. The question is whether the Government has no authority to do so

4. The contention of the petitioner is that the State Government not being a 'dealer' as defined in the Act, is not liable to pay any sales tax and consequently there is no question of any reimbursement as provided in section 18(3). It may be noted that the State Government in the matter of collecting tax on its sales does not purport to act under section 18(3).

5. Its source of power in that regard is traced to section 19 read with the proviso to section 5(3)(a). The contention that sections 19 and 5(3)(a) are ultra vires of the Constitution was not pressed at the hearing. Therefore the only question for decision is whether on a true interpretation of those provisions, the right claimed by the Government can be upheld. To pronounce on that question it is necessary to examine the relevant provisions in the Act.

6. The definition of 'dealer' in section 2(k) to the extent it is relevant for our present purpose is as follows :-

''Dealer' means any person who carries on the business of buying, selling, supplying or distributing goods in the State of Mysore directly or otherwise whether for cash or deferred payment or for other valuable consideration, and includes - (i) the Central Government and a State Government other than the Government of Mysore which carries on such business; ....'

7. But this definition must be read with section 2(1) which says that all definitions contained in section 2 are subject to the qualification 'unless the context otherwise requires'.

8. The next relevant section is section 5. Section 5(1) says :

'Every dealer shall pay for each year tax on his taxable turnover at the rate of two per cent. of such turnover.'

9. The proviso to that section as well as sub-section (2) of section 5 are not relevant for our present purpose. Then we come to sub-section (3) of section 5, which reads :

'Notwithstanding anything contained in sub-section (1), the tax under this Act shall be levied - (a) in the case of the sale of any of the goods mentioned in column (2) of the Second Schedule, by the first or the earliest of successive dealers in the State who is liable to tax under this section, a tax at the rate specified in the corresponding entry of column (3) of the said Schedule, on the taxable turnover of sales of such dealer in each year relating to such goods.'

10. The proviso to this sub-section, viz., section 5(3)(a), is extremely important for our present purpose. That proviso reads :

'Provided that in respect of sale by the State Government of any of the goods mentioned in serial numbers 38, 39 and 40 of the Second Schedule the State Government shall be deemed to be the first dealer in the State and shall be entitled to collect the tax under section 19.'

11. In view of this proviso, though the State Government (the State Government of Mysore) is not a 'dealer' as defined in section 2(k) it is deemed to be a 'dealer' in respect of sales by it of any of the goods mentioned in serial Nos. 38, 39 and 40 of the Second Schedule. The language of the proviso on question is plain and unambiguous. It does not call for any interpretation. Therefore, there is no need to call into aid the rules of construction or refer to cases laying down those rules. The contention of Sri Iyer that 'the State Government' does not mean the State Government of Mysore does not call for serious attention. The proviso refers to 'the State Government' and not to 'a State Government'. Section 5(3)(a) refers to 'the State' meaning the State of Mysore. That much is not disputed. Hence, the reference to 'the State Government' in the proviso must necessarily be to the State Government of Mysore. That apart, sales effected by other State Government are exigible to tax as those State Governments are included within the definition of the 'dealer' in section 2(k). It needs no comment to reject the contention of Sri Iyer that the expression 'the State Government' refers to the Union Government. That is an extreme contention.

12. The Second Schedule to the Act deals with goods on the sale of which a single point tax is leviable on the first or the earlier of successive dealers in the State under section 5(3)(a). Serial No. 38 includes all liquor including beer other than country liquor. Serial No. 39 deals with country liquor other than toddy. Serial No. 40 deals with opium, ganja and bhang. The proviso to section 5(3)(a) has brought sales of these goods by the State Government, within the net of taxation, though the State is not 'dealer' in other respects.

13. Not, we come to section 19. It is clearly a machinery section. The title to that section says 'State Government entitled to collect tax as registered dealers'. This

section reads :

'Notwithstanding anything contained in this Act, the Government of Mysore shall, in respect of any sale of goods effected by them, be entitled to collect by way of tax any amount which a registered dealer effecting such sale would have been entitled to collect by way of tax under this Act.'

14. In view of this provision, the State Government in respect of the transactions falling within the ambit of section 5(3)(a) has power to collect tax from its purchasers just in the same manner a registered dealer could do under section 18(3).

15. Sri Iyer complains that when the State Government computes the tax due under section 19, the purchaser has no right to question the correctness of the quantification made as there is no machinery to enquire into his grievance. When the State Government collects tax from its purchasers under section 19, there is no quantification as such. If the State Government collects more tax than it is entitled to, then, the aggrieved parties must seek such remedies as are open to them under law. Similar is the position when a 'dealer' reimburses tax under section 18(3). There is no distinction between the power conferred on a registered dealer under section 18(3) and that conferred on the State Government under section 19.

16. We do not think that sub-section (2) of section 6-A of the Mysore Act IX of 1964 either bears on the point under consideration or is relevant for our present purpose, nor do we think that the decisions of this Court in M. Kuppuswami Naicker v. Commercial Tax Officer and Kuppuswamy Naicker v. Commercial Tax Officer have any relevance for our present purpose.

17. In the result, this petition fails and the same is dismissed with costs. Advocate's fee Rs. 100.

18. Petition dismissed.