

The State of Mysore Vs. S.S. Yalamali

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Court : Karnataka

Decided On : Dec-22-1967

Reported in : (1968)1MysLJ237; [1968]21STC305(Kar)

Judge : M. Sadasivayya, J.

Acts : Mysore Sales Tax Act, 1957 - Sections 5(4), 13, 13(3), 13(4) and 32; Income-tax Act, 1961 - Sections 222(1); Madras General Sales Tax Act, 1939 - Sections 18-A

Appeal No. : Civil Revision Petition Nos. 479 and 491 of 1966

Appellant : The State of Mysore

Respondent : S.S. Yalamali

Advocate for Pet/Ap. : Shantharaju, Adv. for the Government Pleader

Judgement :

ORDER

Sadasivayya, J.

1. These two revision petitions have been filed under sub-section (4) of section 13 of the Mysore Sales Tax Act, 1957 (hereinafter referred to as the Act). The petitioner in both the cases is the State of Mysore, by the Commercial Tax Officer, II Circle, Gadag. The respondent is the same person in both these revision

petitions and he is unrepresented. He had been assessed to tax under the Act and having committed default in the payment of the same, the petitioner had filed two applications under section 13(b) of the Act, before the Judicial Magistrate, I Class, Gadag, praying for the recovery by the Magistrate of the amount due from the respondent, as if it were a fine imposed by the Magistrate. Those two applications having been dismissed by that Magistrate, these two revision petitions have been filed against those orders made by the learned Magistrate.

2. The learned Magistrate has dismissed those two applications on two grounds. One of the grounds is that at the time when those two applications were filed before the Magistrate, recovery proceedings were still pending before the revenue authorities. Having regard to the language of sub-section (3) of section 13 of the Act, the Magistrate was of the view that when the proceedings for the recovery of the dues as if they were arrears of land revenue were still pending, an application could not be made to the Magistrate for recovery of the dues as if they were a fine imposed by him. Mr. Shantharaju, the learned Advocate appearing for the petitioner in both these cases has questioned the correctness of the view taken by the learned Magistrate in both the cases.

3. The relevant part of sub-section (3) of section 13 of the Act is as follows :

'(3) Any tax assessed, or any other amount due under this Act from a dealer, may without prejudice to any other mode of collection, be recovered -

(a) as if it were an arrear of land revenue, or

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him

The existence of the word 'or' between clauses (a) and (b) indicates that either clause is alternative to the other. When sub-section (3) is read, the impression created in one's mind is that without prejudice to any other mode of collection, the dues may be recovered either as if it were an arrear of land revenue, or it may be recovered by any Magistrate (on application to him) as if it were a fine imposed by him. The existence of the word 'or' is opposed to the stand that resort can be had,

simultaneously, to recovery under clauses (a) and (b). No doubt, both the remedies are open; at a time, resort can be had to either of them, but not to both at the same time. This view is also supported by what has been stated by the Supreme Court in *The State of Kerala and Others v. C.M. Francis and Co. and Others* ([1961] 12 S.T.C. 119 at p. 122). Referring with approval to the observations of Mahmood, J., in *Shankar Sahai v. Din Dial* ((1889) I.L.R. 12 All. 409), the Supreme Court has stated as follows :

'It was observed by Mahmood, J., in *Shankar Sahai v. Din Dial* ((1889) I.L.R. 12 All. 409) that where the law provides two or more remedies, there is no reason to think that one debars the other and therefore both must be understood to remain open to him, who claims a remedy. Unless the statute in express words or by necessary implication laid down that one remedy was to the exclusion of the other, the observations of Mahmood, J., quoted above must apply. In our opinion, in the absence of any such provision in the Act, both the remedies were open to the authorities, and they could resort to any one of them at their option.'

It is to be noted that though both the remedies were open, the Supreme Court has observed that the authorities could resort to any one of them at their option.

4. If it had been the intention of the law that the authorities should have the power to have recourse to both the remedies, at one and the same time, it would have been clearly stated so. It may be pointed out that in the Income-tax Act, 1961, it is clearly stated in section 222(1) that recovery of the amount due from the assessee could be made by one or more of the modes mentioned therein. In these circumstances, I am inclined to hold the view that the learned Magistrate was justified in upholding the contention of the respondent to the effect that the applications under clause (b) of sub-section (3) of section 13 of the Act were not maintainable while the proceedings for recovery were still pending before the revenue authorities.

5. Mr. Shantharaju contended that the view taken by the learned Magistrate on the other ground was clearly erroneous and he pressed for a clarification of the position. Before setting out the second ground on which the two applications have been dismissed, it will be necessary to state certain facts. The respondent had

been assessed to tax in respect of certain transactions of purchase. Sub-section (4) of section 5 of the Act which provides for levy of tax either at the point of sale or at the point of purchase, came into force from the 1st January, 1959. It would appear that the purchases made by the respondent were prior to the said date. It is stated that as the law stood prior to 1st January, 1959, purchases (of that category of goods) were not liable to tax. A contention was therefore advanced before the learned Magistrate that the assessment to tax of the turnover of those purchases, was not valid under the Act. The Commercial Tax Inspector appears to have conceded that at the time when those transactions of purchases were made, they were not liable to tax under the provisions of the Act, as the Act stood at that time. He, however, appears to have contended that the Magistrate was not competent to question the validity of the assessment made by the Commercial Tax Officer as the competency of the Magistrate to do so was barred under the provisions of the Act. The learned Magistrate upheld the contention of the respondent that the said transactions of purchase could not be validly assessed to tax under the provisions of the Act as the Act stood prior to 1st January, 1959. Mr. Shantharaju does not dispute the proposition that prior to 1st January, 1959, the said transactions of purchase were not liable to be assessed to tax under the provisions of the Act, as the Act then stood. But, what has been contended by him is that in the face of section 32 of the Act, the Magistrate did not have the jurisdiction or the competence to decide the validity or otherwise of the assessment. For the reasons to be presently stated, it seems to me that this contention of Mr. Shantharaju is well founded.

6. Section 32 of the Act is as follows :

'32. Assessments, etc. not to be questioned in prosecution. - The validity of the assessment of any tax or levy of any fee or other amount, made under this Act, or the liability of any person to pay any tax, fee or other amount so assessed or levied, shall not be questioned in any criminal court, in any prosecution or other proceedings whether under this Act or otherwise.'

In *Subbaiah Setty v. State of Andhra Pradesh* ([1963] 14 S.T.C. 680), the Supreme Court while discussing the ambit of the expression 'any assessment

made under this Act' used in section 18-A of the Madras General Sales Tax Act, 1939, stated as follows :

'The expression 'any assessment made under this Act' is, in our opinion, wide enough to cover all assessments made by the appropriate authorities under this Act whether the said assessments are correct or not. It is the activity of the assessing officer acting as such officer which is intended to be protected and as soon as it is shown that exercising his jurisdiction and authority under this Act, an assessing officer has made an order of assessment, that clearly falls within the scope of section 18-A. The fact that the order passed by the assessing authority may in fact be incorrect or wrong does not affect the position that in law the said order has been passed by an appropriate authority and the assessment made by it must be treated as made under this Act. Whether or not an assessment has been made under this Act will not depend on the correctness or the accuracy of the order passed by the assessing authority. In determining the applicability of section 18-A, the only question to consider is : 'Is the assessment sought to be set aside or modified by the suit instituted, an assessment made under this Act or not ?' It would be extremely anomalous to hold that it is only an accurate and correct order of assessment which falls under section 18-A. Therefore, it seems to us that the order of assessment challenged by the appellant in the suit falls under section 18-A.'

Again, in a later case reported in *Kamala Mills Ltd. v. State of Bombay* ([1965] 16 S.T.C. 613 at p. 624), the Supreme Court has stated as follows :

'In our opinion, it is plain that the very object of constituting appropriate authorities under the Act is to create a hierarchy of special tribunals to deal with the problem of levying assessment on sales tax as contemplated by the Act. If we examine the relevant provisions which confer jurisdiction on the appropriate authorities to levy assessment on the dealers in respect of transactions to which the charging section applies, it is impossible to escape the conclusion that all questions pertaining to the liability of the dealers to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not the return is correct; whether or not

transactions which are not mentioned in the return, but about which the appropriate authority has knowledge, fall within the mischief of the charging section; what is the true and real extent of the transactions which are assessable; all these and other allied questions have to be determined by the appropriate authorities themselves The whole activity of assessment beginning with the filing of the return and ending with an order of assessment, falls within the jurisdiction of the appropriate authority and no part of it can be said to constitute a collateral activity not specifically and expressly included in the jurisdiction of the appropriate authority as such.'

In the light of what has been stated by the Supreme Court as extracted above, it is clear that section 32 of the Act was a complete bar to the competence of the learned Magistrate to question the validity of the assessment made in respect of the transactions of purchase entered into by the respondent. It is clear that the learned Magistrate was in error in having taken upon himself the responsibility of ascertaining the validity of that assessment.

7. It seems to me that it is sufficient that the above clarification has been made. As already stated, the view of the learned Magistrate that the applications had to be dismissed on the other ground, is correct.

8. In the result, these revision petitions are dismissed.

9. Petitions dismissed.

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