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Court : Karnataka

Decided On : Jan-31-1962

Reported in : [1962]13STC597(Kar)

Judge : K.S. Hegde and ;Iqbal Husain, JJ.

Acts : Central Sales Tax Act, 1956 - Sections 5, 8, 8(1), 8(2), 8(3) and 8(4)

Appeal No. : Civil Revision Petition No. 1278 of 1961

Appellant : Mysore Silk House

Respondent : The State of Mysore

Advocate for Def. : D.M. Chandrasekhar, Government Pleader

Advocate for Pet/Ap. : S.P. Bhat, Adv.

Judgement :
ORDER

Hegde, J.

1. The petitioner is a dealer in power-loom cloths. The goods with which we are concerned in this case were the subject-matter of inter-State trade, the relevant period being 1st July, 1957, to 31st March, 1958.

2. Under the Mysore Sales Tax Act, 1957, the disputed transactions were not subject to any tax, they being second sales. But the Tribunals below have come to the conclusion that in view of section 8(1) and (2) of the Central Sales Tax Act, 1956, which came into force on 1st July, 1957, these transactions have become liable to be taxed. They have held that a portion of the turnover, i.e., Rs. 34,839-77 is liable to be taxed under section 8(2) and the remaining portion of the turnover, i.e., Rs. 86,577-49 is liable to be taxed under section 8(1) of that Act. We may mention at this stage that the latter portion of the turnover is covered by 'C' forms, as required by sub-section (3) of section 8. We have had occasion to consider the scope of section 8(2) in C.R.P. No. 964 of 1961 (Since reported as Yadalam Lakshminarasimhiah Setty & Sons v. State of Mysore [1962] 13 S.T.C. 583). Therein we have opined that he liability of a dealer, excepting as regards the minimum turnover, will under no circumstances be more than what it would have been under the provisions of the appropriate State law, had the disputed transactions related to intra-State sales. From that it follows that in this case the transactions that fall under section 8(2) cannot be subjected to any tax, as they were not liable to be taxed under the Sales Tax Law of the State.

3. Now coming to the other question whether the turnover of Rs. 86,577-49 is liable to be taxed, this question depends upon our decision as regards the scope of the proviso to section 8(1). Before proceeding to deal with the proviso in question, we shall refer to section 8(1). That section reads :

'Every dealer, who in the course of inter-State trade or commerce -

* * * * sells to a registered dealer other than the Government, goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be one per cent. of his turnover.'

4. Now, we may proceed to consider the proviso. It says 'provided that if under the Sales Tax Law of the appropriate State the sale or purchase of any goods by a dealer is exempt from tax generally and not in specified cases or in specified circumstances or is subject to tax (by whatever name called) at a rate or rates which is or are lower than the rate specified in sub-section (1), the tax payable under this Act on the turnover in relation to the sale of such goods in the course of

inter-State trade or commerce shall be nil or shall be calculated at the lower rate, as the case may be'. The dispute in this case centres round the interpretation to be placed on the words 'the sale or purchase of any goods by a dealer is exempt from tax generally and not in specified cases or in specified circumstances.'

5. According to the learned Government Pleader the words 'exempt from tax generally' refer to 'goods' which were the subject-matter of sale or purchase. But according to Sri Bhat, the learned counsel for the petitioner, those words refer to the sale transaction referred to in section 8(1). In other words, the contention of the Government Pleader is that unless the goods that are the subject-matter of sale or purchase are totally exempt from tax under the appropriate State law the proviso does not come into play. According to him, the proviso does not focus its attention on any particular sale of purchase transaction; it deals with goods which are totally exempt from taxation.

6. There is no doubt that the language employed in the proviso is far from happy. With some exaggeration, one may say that the Legislature has spoken like the proverbial Sphinx. The habit of using unintelligible expressions in fiscal statutes is a hangover of the past. Despite the assurances to the contrary, given by the men in power, the draftsmen seem to be unable to get over the old habit. But it is a well accepted canon of construction that if two reasonable constructions can be placed on a provision imposing tax, that interpretation which is favourable to the subject has to be adopted.

7. In finding out whether the exemption mentioned in the proviso relates to any goods, or any dealer or to any particular transaction, one has to bear in mind the scheme of section 8. Before proceeding to consider the scheme of that section, we may well remind ourselves that under the Sales Tax Laws prevailing in this country three types of exemptions are generally provided : (1) all transactions of certain dealers are made exempt, viz. Governments; (2) transactions relating to certain goods are wholly exempt from taxation, viz., kumkum, and (3) some transactions are exempt from tax though the dealer who effects those transactions is not exempt from taxation, nor the goods which are the subject-matter of the transactions in question are exempt from taxation, e.g., may be a second sale

inside the State in respect of certain goods. The question for consideration now is under which category the exemption mentioned in the proviso comes.

8. It was not argued that the exemption in question has any reference to the dealer, though such a contention, if it shad been raised, could not have been unceremoniously brushed aside. The relevant portion of the clause says that 'the sale or purchase of any goods by a dealer is exempt from tax generally.' If the reference is to a dealer the expression 'the sale' is incongruous. Further if it had referred to the dealer mentioned in section 8(1) it would have been appropriate to say 'provide that if under the Sales Tax Act Law of the appropriate State sales or purchases of any goods by the dealer mentioned in section 8(1) are exempt from tax generally .....'

9. Let us now take up for consideration whether the learned Government Pleader's contention that the exemption in question relates to 'goods' can be accepted as correct. We may mention at this stage that under section 8(1) the subject that is taken up for legislative treatment is the sale of goods by a dealer in the course of inter-State trade or commerce. The proviso above referred to is an exception to section 8(1). There is another exception to section 8(1) and that is found in sub-section (4) of section 8 which reads :

'The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority.'

10. There can be no dispute, and there has not been any dispute, that sub-section (4) of section 8 relates to the transaction of sale referred to in section 8(1). The theme of the proviso which is an exception to the main section is not, ordinarily, different from the theme of the main section of which it is an exception. As mentioned earlier, section 8(1) deals with sales in the course of inter-State trade or commerce. Hence, prima facie, the proviso must also deal with such sales.

11. It may also be noted that before the word 'sale' found in the proviso there is the definite article 'the'. 'The sale' must refer to some definite sale and not to any indefinite transaction in any goods. 'The sale' must necessarily refer to the sale contemplated in sub-section (1) of section 8. If cannot refer to any and every sale of goods. Further after the words 'the sale or purchase of any goods by a dealer', and before the words, 'exempt from tax generally', the verb used is 'is' and not 'are', which means that the verb refers to 'the sale or purchase' and not to 'goods'. If it had referred to 'goods' the verb used should have been 'are'. Whichever test we may apply, the only conclusion possible is that the exemption in question relates to the sale of goods in the course of inter-State trade or commerce referred to in section 8(1).

12. Why then the Legislature used the word 'purchase' after the word 'sale' in the proviso, while the main section merely deals with sale transactions It is true that section 8(1) concerns itself with inter-State sales. But a sale and a purchase can be aptly compared to the obverse and inverse of a coin. Some State Sales Tax Laws do not tax sale transactions in certain goods which are used for inter-State sales or are intended for inter-State sales, while in respect of some other goods the exemption relates to purchase transactions intended for inter-State sale. Evidently it was not the intention of the Parliament to deprive the dealers of these benefits. The proviso evidently lays down that if the sale transaction dealt with in section 8(1) is exempt from taxation under the appropriate State law or if the purchase transaction leading to that sale transaction is exempt from taxation under that law, in either case, no tax can be levied under section 8(1). To cite a specific example, under the Mysore Sales Tax Act, 1957, prior to its amendment, the proviso to sub-section (4) of section 5 read :

'Provided that no tax shall be levied in respect of the last purchase inside the State, if the said goods are intended for sale in the course of inter-State trade or commerce.'

13. As per this provision the last purchase transaction of certain goods inside the State which is intended for sale in the course of inter-State trade or commerce was exempt from taxation. Now, under the proviso to section 8(1) it appears that the

benefit of that exemption is extended to the related inter-State sale transaction. That is why the Legislature is likely to have used the word 'or purchase' after the word 'sale' in the proviso. It is true, that the language used in the proviso could have been happier. The Parliament should have made its intention clear by appropriate words. Economy in words does not always add to clarity, nor words of uncertain import like the words 'exempt generally' make the task of Court easy.

14. For the reasons mentioned above, we agree with Sri Bhat that no portion of the disputed turnover is liable to be taxed under the Central Sales Tax Act, 1956.

15. In the result, this revision petition is allowed with costs and the levy imposed on the petitioner is set aside. Advocate's fee Rs. 100.

Mir Iqbal Hussain, J.

16. I agree.

17. Petition allowed.

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