

Nanjappa and anr. Vs. the Assistant Commercial Tax Officer, I Circle, Mandya and anr.

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Court : Karnataka

Decided On : Feb-19-1981

Reported in : 1981(1)KarLJ463; [1981]48STC168(Kar)

Judge : M.P. Chandrakantaraj, J.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 25B

Appeal No. : Writ Petitions Nos. 7167 and 7168 of 1977

Appellant : Nanjappa and anr.

Respondent : The Assistant Commercial Tax Officer, I Circle, Mandya and anr.

Advocate for Def. : V.G. Dharama Kumar, High Court Government Pleader

Advocate for Pet/Ap. : H. Subramhanya Jois, Adv.

Judgement :

ORDER

Chandrakantaraj Urs, J.

1. The two petitioners in the above two writ petitions are agriculturists in Abalawadi Village, Koppa Hobli, Maddur Taluk in Mandya District. They grow sugarcane and

paddy on the lands owned by them. They have asserted that they are not dealers within the meaning of the term 'dealer' contained in the [Karnataka Sales Tax Act, 1957](#) (hereinafter referred to as 'the Act'). The petitioners have further averred that they have crushers which are operated by source of power other than electric power such as manual or animal power. They have also asserted that they crush only the sugarcane grown by them. When things were such the petitioners received separate notices issued by the 1st respondent-Assistant Commercial Tax Officer bearing the date 5th July, 1977, informing them that they are due to pay for the year 1975-76 tax of Rs. 2,000.00 together with fee of Rs. 25.00 and for the year 1976-77 a sum of Rs. 2,000.00 towards tax and Rs. 25.00 towards fee and for 1977-78 only the fee of Rs. 25.00. Thus a total of Rs. 4,075.00 is said to be due from the first of the petitioners and Rs. 2,000.00 for the year 1976-77 from the second of the petitioners. The notices further demand that the amounts indicated therein should be paid within seven days from the date of its receipt, failing which steps would be taken to recover it in accordance with law. Aggrieved by the same, the petitioners have approached this Court under article 226 of the Constitution of India inter alia contending that the impugned notices are without the authority of law for the reasons :

- (1) that they are not dealers under the Act liable to pay tax under the Act;
- (2) that the chargeability to tax arises only when the petitioners purchase sugarcane from others and not when they crush their own sugarcane;
- (3) that there has been no assessment prior to the issue of demand notices which renders the demand notices illegal and without jurisdiction.

2. No statement of objections as such has been filed by the respondents, that is, the Assistant Commercial Tax Officer and the State of Karnataka. However, the learned Government Pleader appearing for the respondents has stated that these demand notices have been issued only to put on alert the sugarcane crushers, operating such crushers with electric power, of the need to register themselves as dealers and subject themselves for payment of tax under section 25-B of the Act which was introduced by an amendment of the Act in 1975. The records do not disclose any assessment proceedings concluded by the 1st respondent or

otherwise. However, the records do disclose that on investigation a spot mahazar was made and it was found that the petitioners were using electric power for their crushers. Thus, it is contended for the respondents that the petitioners are liable to pay tax in accordance with the provisions contained in section 25-B of the Act. This may be so. As a disputed question of fact I do not say anything more about it.

3. The petitioners, however, must succeed in having the demand notices quashed inasmuch as there is no assessment made under the provisions of the Act to make the demand. The learned Government Pleader has not brought to my notice any other provision of the Act or the Rules made thereunder which empowers the 1st respondent to issue the demand notices. It is well-settled law that no demand notice can issue unless assessments are completed. Without assessment proceedings a demand notice would be illegal. Therefore, on being satisfied that there are no assessment proceedings in the case of the petitioners, the impugned demand notices are hereby quashed. But, the 1st respondent is free to issue fresh demand notices after proper assessment proceedings are held and assessments are completed in accordance with the provisions of the Act.

4. There will be no order as to costs.

5. Petitions allowed.