

Mysore Cements Ltd. Vs. State of Karnataka

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Court : Karnataka

Decided On : Dec-02-1983

Reported in : [1985]59STC193(Kar)

Judge : Jagannatha Shetty and ;S.R. Rajasekhara Murthy, JJ.

Acts : Karnataka Sales Tax Act - Sections 10, 10(2), 12, 12(1), 12(2), 12-A and 12-B, ; Karnataka Sales Tax Rules - Rules 18 and 21

Appeal No. : S.T.R.P. Nos. 16 and 19 of 1979

Appellant : Mysore Cements Ltd.

Respondent : State of Karnataka

Advocate for Def. : S. Rajendra Babu, Government Adv.

Advocate for Pet/Ap. : K.R. Prasad, Adv.

Judgement :

Jagannatha Shetty, J.

1. These two revision petitions by the common assessee are concerned with the validity of the assessment for the years 1966-67 and 1967-68.

2. The petitioner is a company, which manufactures and sells cement. It is registered as a dealer both under the Karnataka Sales Tax Act and also under the

Central Sales Tax Act. During the relevant assessment periods, the company submitted quarterly returns along with payment of advance tax under rule 21 of the Karnataka Sales Tax Rules. Rule 21 as it then stood provided for filing such returns in the case of a dealer, whose annual turnover exceeded Rs. 40,000. The company, however, did not file annual returns.

3. On 13th August, 1970 rule 21 was repealed. On 29th November, 1975 the Assistant Commercial Tax Officer, who was the concerned assessing authority, made two assessments, one under the State Act and another under the Central Act for each of the two years in question.

These assessments have been upheld by the appellate authorities. The assessments made under the State Act were also upheld by this Court earlier in S.T.R.P. No. 17 (Decision of the High Court in Mysore Cements Limited v. State of Karnataka (S.T.R.P. No. 17 of 1979 dated 8th February, 1979) is printed at page 197 infra.) and 18 of 1979.

4. In these cases, the company has challenged the validity of the assessments made under the Central Act. The contentions taken may briefly be summarised as follows :

That there was no option exercised and intimated by the company to the assessing authority for the purpose of filing quarterly as required under rule 21. The quarterly return filed under rule 21 could form the basis of assessments only in the method prescribed under that rule. After the repeal of rule 21, those quarterly returns could not be taken into consideration for the purpose of making assessments. The company, admittedly, did not file annual returns and it was, therefore, a case of escaped assessment for which the time prescribed under section 12-A of the State Act is five years from the expiry of the year to which the tax relates. The assessing authority for the first time issued notices to the company to produce account books on 15th November, 1974 for the year 1966-67 and on 22nd November, 1974 for the year 1967-68. The assessments made on 29th November, 1975 were, therefore, barred by time.

5. Before proceeding on these lines, we may refer to the order of this Court rejecting S.T.R.P. Nos. 17 and 18 of 1979 and confirming the assessments under the State Act. The relevant portion of that order runs as follows :

'In the present case, since the assessee himself filed quarterly returns, he must be regarded as having intimated to the assessing authority his option to be assessed according to the method prescribed in rule 21. No particular form had been prescribed for intimating such option of the assessee for adopting the method of filing quarterly returns. Hence, the quarterly returns filed by the assessee for the assessment year 1966-67 could form the basis for assessment otherwise than under section 12-A.'

In view of this order, the company cannot again contend that the quarterly returns filed under rule 21 could not form the basis for assessment after the repeal of the said rule. Mr. Prasad for the petitioner, however, urged that those quarterly returns were filed only for the purpose of paying advance tax under section 12-B and that was not noticed in the earlier case. We have perused the quarterly returns filed by the assessee. It is in form 4 prescribed for returns of turnover under rules 18 and 21. If those returns could form the basis of assessment under the State Act, we fail to understand why they could not form the basis for assessment under the Central Act since the assessments under both the enactments are governed by the same procedure.

6. Mr. Prasad's next contention that upon the repeal of rule 21, the quarterly returns filed thereunder could not form the basis for assessment also has no substance. Rule 21, no doubt, was repealed on 13th August, 1970, but the quarterly returns filed and accepted by the assessing authority could not disappear by the repeal of the rule. The power to assess is located under section 12 of the State Act. Section 12, so far as it is material, provides :

'12. Returns and assessment. - (1) Notwithstanding anything contained in section 12-B, every dealer whose turnover is twenty-five thousand rupees or more in a year, and every dealer who is liable to get himself registered under sub-section (2) of section 10 whatever may be the quantum of his turnover shall submit such return or returns relating to his turnover in such manner and within such period as

may be prescribed.

(1-A) (2) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.

(3) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall assess the dealer to the best of his judgment, recording the reasons for such assessment :

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of the return submitted by him. (4)

Section 12(1) requires every dealer who comes within the category therein to submit return or returns relating to his turnover in such manner and within such period as may be prescribed. The petitioner herein filed quarterly returns in accordance with the procedure prescribed under rule 21. It would be open to the assessing authority to accept that return or not to accept it. If the correctness of the returns is not accepted, then section 12(3) confers power on the assessing authority to assess the dealer to the best of his judgment.

7. Mr. Prasad submitted that the return referred to under section 12(1) must be return which is required to be filed under rule 18 and not under rule 21. It is true that rule 18 refers to annual return and final assessment. But form No. 4 prescribed for filing the return of turnover, makes little difference between the return under rule 18 and the return under rule 21. In fact, the same form has been prescribed for filing returns under both the rules. The petitioner has opted to file the quarterly returns instead of filing annual return. The assessing authority, therefore, could properly take into consideration those returns for the purpose of completing the assessment under section 12. The Court should not be guided by too much of technicalities. The rules were prescribed to give effect to the intent of the Legislature and the Court should try to give effect to that legislative intent by

reading the rules in accordance with the scheme provided under the Act.

It is not in dispute that if the assessment was under section 12, the question of limitation does not arise.

8. This disposes of the contention relating to the question of limitation. The next contention relates to the packing charges which were included in the estimate for the purpose of determining the taxable turnover. It was the contention of Mr. Prasad before the Tribunal that packing charges were separately charged and no sales tax under the Central Act was also recovered thereon. The Tribunal has rejected that claim by following the judgment of this Court in *Hukmichand and Brothers v. State of Mysore* [1970] 25 STC 320.

9. It seems to us that the Tribunal has committed an error in this regard. This Court in *Hukmichand's case* [1970] 25 STC 320 was not called upon to consider the effect of section 10 of the Central Act 28 of 1969. Section 10 thereof provides for certain exemptions from liability to pay tax in respect of inter-State transactions effected during the period between the 10th of November, 1964 and the 9th of June, 1969. There is no liability to pay tax, if the dealer effecting such sales has not collected any tax on the ground that no such tax could have been collected or levied in respect of such sale or any portion of the turnover relating to such sale. But it is for the dealer as required under section 10(2) of the Central Act to prove that no tax was collected in respect of the sales referred to or in respect of any portion of the turnover thereto.

10. If it is the case of the petitioner that no tax under the Central Act was collected on packing charges. This contention requires to be examined by the assessing authority, since the exemption claimed in respect of the turnover relating to packing charges falls squarely within the period provided under section 10 of the Central Act 28 of 1969.

11. In the result, these revision petitions are allowed in part. The order of assessment in each case as affirmed by the appellate authorities is modified by setting aside the assessment so far as it relates to the turnover representing the packing charges. A direction shall issue to the assessing authority to examine

whether the petitioner has collected tax on packing charges and if not, to give the benefit of section 10 of the Central Act 28 of 1969 to the petitioner. The assessing authority shall re-examine the matter after affording a reasonable opportunity to the petitioner to produce evidence.

12. In the circumstances of the case, we make no order as to costs.

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