Prasad Novelties Vs. State and Another

Prasad Novelties Vs. State and Another

SooperKanoon Citation : sooperkanoon.com/379551

Court : Karnataka

Decided On : Sep-29-1995

Reported in : [2000]119STC448(Kar)

Judge : R.V. Raveendran, J.

Acts : Bombay Sales Tax Act, 1959 - Sections 33(2)

Appeal No. : Writ Petition No. 33627 of 1995

Appellant : Prasad Novelties

Respondent : State and Another

Advocate for Def. : V. Vidya, Adv.

Advocate for Pet/Ap. : S.D. Raghunandan Singh, Adv.

Judgement :
ORDER

R.V. Raveendran, J.

1. The petitioner is a registered dealer under the Karnataka Sales Tax and Central Sales Tax Acts. By an order of assessment dated June 8, 1995 relating to the period April 1, 1993 to March 31, 1994, the assessing authority has assessed the inter-State sales on imitation jewellery to a tax at 10 per cent. The order of

assessment with the notice of demand for Rs. 6,932 is produced as annexure 'B'. According to petitioner, the sale of imitation jewellery cannot be subjected to any tax having regard to section 8(2A) of the Central Sales Tax Act, 1956 read with Notification No. FD 58 CSL 93(I) dated March 31, 1993 issued under section 8A of Karnataka Sales Tax Act, 1957. Hence, the petitioner has filed this petition seeking a direction to the assessing authority not to levy any tax on imitation jewellery when sold in the course of inter-State trade or commerce and quash the tax levied under the Central Sales Tax Act, 1956 by quashing the assessment order with notice dated June 8, 1995 (annexure 'B') and the consequential notice dated September 6, 1995 (annexure 'C') under section 13(3) of the Karnataka Sales Tax Act.

2. The State Government, in exercise of its power under section 8A of the Karnataka Sales Tax Act, has exempted with effect from April 1, 1993, the tax payable by a dealer under section 5 of the said Act on the sale of several items of goods mentioned therein including imitation jewellery. Section 8(2A) of the Central Sales Tax Act provides that notwithstanding anything contained in sub-section (1A) of section 6 or sub-section (1) or clause (b) of sub-section (2) of section 8, the tax payable under the Central Sales Tax Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent, whether called a tax or fee or by any other name, shall be nil or, as the case may be, shall be calculated at the lower rate. The explanation to the said sub-section (2A) of section 8 provides that for the purposes of the said sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State, if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

3. It is evident from the explanation to section 8(2A) of the Central Sales Tax Act that, if the exemption is only in specified circumstances or under specified

conditions then it cannot be construed as exemption from tax generally; and if it is otherwise, then it is to be construed as exempted from tax generally. In this case, the notification dated March 31, 1993 makes it clear that exemption is not in specified circumstances nor under specified conditions. As the sale is exempted from tax generally under the Karnataka Sales Tax Act, no tax is payable under Central Sales Tax Act in regard to inter-State sales on imitation jewellery.

4. Hence this petition is allowed and the assessment order (annexure 'B') in so far as it relates to the levy of tax on inter-State sales on imitation jewellery, is quashed. Consequently, the demand notice dated June 8, 1995 and notice dated September 6, 1995 (annexure 'C') are also quashed.

5. Smt. Vidya, learned Government Pleader, is permitted to file memo of appearance within six weeks.

6. Petition allowed.