

State of Mysore and Others

Vs

Mallick Hashim and Co.

Civil Appeals Nos. 2215 to 2217 of 1969

(K. S. Hegde, P. Jagmohan Reddy, H. R. Khanna JJ)

30.10.1972

JUDGMENT

HEGDE, J. –

1. These are appeals by special leave. The first two appeals, namely, Civil Appeals Nos. 2215 and 2216 of 1969 arise from the decision of the Mysore High Court in two writ petitions filed by a dealer in hides and skins whereas the third appeal, namely, Civil Appeal No. 2217 of 1969, arises from the Judgment of the same court in a sales-tax revision petition. In all these petitions the only question that arises for decision is whether Rule 39-A of the Rules framed under the Mysore Sales Tax Act, 1957, is ultra vires the rule making power.

2. Section 15 of the Central Sales Tax Act, 1956, provides thus :

"Every Sales-tax law of a state shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions, and conditions, namely -

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;

(b) Where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

3. Section 5 (4) of the Mysore Sales-tax Act, 1957, provides :

"Notwithstanding anything contained in sub-section (1) a tax under this Act shall be levied in respect of the sale or purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule on the dealer liable to tax under this Act on his taxable turnover of sales or purchases in each year relating to such goods :

Provided that where tax has been paid in respect of the sale or purchase of any of the

declared goods under this sub-section and such goods are subsequently sold in the course of the interstate trade or commerce, the tax paid under this Act shall be refunded to such person in such manner and subject to such conditions as may be prescribed."

4. Apparently in exercise of the powers conferred by Section 5(4) of the Mysore Sales Tax Act, 1957, the Government of Mysore framed Rule 39 A. That rule reads :

"Refund of tax in the case of certain types of sales of declared goods. - (1) The tax levied under sub-section (4) of Section 5 in respect of the sale or purchase inside the State of any goods specified therein shall, if such goods are sold in the course of inter-State trade or commerce, be refunded in the manner and subject to the conditions prescribed in this rule to the dealer who had made the inter-State sale and has paid tax under the Central Sales-tax Act, 1956 (Central Act 74 of 1956), in respect of such sales.

(2) Every such dealer who claims a refund under the rules, shall within the time allowed in sub-rule (3), submit to the assessing authority a statement in Form 4-A.

(3) The statement referred to in sub-rule (2) shall be submitted so as to reach the assessing authority not later than the date on which the return or turnover for the period in respect of the sale in the course of inter-State trade or commerce referred to in sub-rule (1) is due :

Provided that in respect of any period prior to the publication of this rule, the statement referred to in sub-rule (2) shall be submitted to the assessing authority within a period of three months from the date of publication of this rule in the Official Gazette, if the due date for the submission of the return of turnover for the said period has already elapsed.

(4) The burden of proving the claim preferred shall be on the dealer.

(5) On receipt of the statement in Form 4-A, the assessing authority shall, if it is satisfied after such scrutiny of the accounts and after such enquiry as it considers necessary that the claim is admissible, pass an order refunding the tax.

(6) If the statement submitted appears to the assessing authority to be incorrect, incomplete or otherwise not in order, it shall, after making such enquiry as it considers necessary and after giving the dealer an opportunity of being heard, pass such orders thereon as it thinks fit.

5. As mentioned earlier the petitioner in the two writ petitions are dealers in hides and skins whereas the petitioner in the sales tax revision petition before the High Court is a dealer in copra and coconuts. It is not disputed that hides and skins as well as copra and coconuts are declared goods under Section 14 of the Central Sales Tax Act, 1956. It is also not disputed that at the time of purchase of those goods the dealers in question had paid the Purchase-tax. Further it is admitted that these goods were sold in the course of inter-State sale transactions. It is not denied that the petitioners had a right to apply for refund of the taxes paid by them but the objections raised by the State in those refund applications were not filed within the period mentioned in Rule 39A(2) and (3) and further in two cases it is contended that the applications were not made in the prescribed form.

The High Court has taken the view that Rule 39-A is ultra vires the rule-making power. It has opined that the rules made under Section 5(4) of the Mysore Sales Tax Act, 1957, are those which must relate to the manner and conditions under which refund has to be made and such a rule cannot in substance deprive the dealer of the right to get refund to which he is entitled to under Section 15 of the Central Sales Tax Act, 1956, as well as Section 5(4) of the Mysore Sales Tax Act, 1957. We have not thought it necessary to go into that question as, in our opinion, sub-rules (2) and (3) of Rule 39-A are wholly unreasonable rules and consequently these cannot be sustained. Sub-rule (3) of Rule 39-A provides that before a person is entitled to refund under Section 15 of the Central Sales Tax Act, 1956, as well as under Section 5(4) of the Mysore Sales Tax Act, 1957, he must have made the refund application within the time before which he should have submitted his Sales-tax returns. In many States the dealers have to submit quarterly returns. Under Rule 18 framed under the Mysore Sales Tax Act, 1957, we are informed that a dealer will have to submit his annual return within 30 days of the end of the financial year. That means even if a sale in the course of inter-State trade has been made on March 31 of a year, the refund application will have to be made within 30 days from that date. The position will be worse still if the dealers is required to submit quarterly returns. The learned counsel for the State was not in a position to tell us whether in the Mysore State the dealers have attempt to file quarterly returns. In our opinion the impugned rule is merely an attempt to deny the dealers the refund to which they are entitled under the law or at any rate to make the enforcement of that right unduly difficult.

6. In our judgment this is not a fit case where we should interfere in exercise of our powers under Article 136 of the Constitution. These appeals are accordingly dismissed. The respondents are not represented before us. Hence there will be nor order as to costs.

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