

The State of Tamil Nadu

Vs

K. A. Ramudu Chettiar & Co.

Civil Appeal No. 2108 of 1969

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

22.02.1973

JUDGEMENT

HEGDE, J. -

1. In this appeal by certificate, the only question of law arising for decision is whether the Appellate Assistant Commissioner had powers to enhance the tax levied on the assessee-respondent by the Sales Tax Officer.

2. The brief facts of these case are : The respondent assessee is a registered dealer. During the assessment for the assessment year 1960-61 the assessee claimed that five out of the five transaction effected by it were inter-State sales The Sales Tax Officer came to the conclusion that two out of these five transactions were transactions effected by it were inter-State sale & the remaining three were inter-State Sales & the remaining three were inter-State Sales. Aggrieved by that decision the assessee went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner came to the conclusion that all the five transaction were inter-State sales. But he rejected the contention of the assessee that it was entitled to the exemption claimed by it. The Appellate Assistant Commissioner enhanced the tax levied on those three transactions on the ground that the assessee had failed to produce the required 'C' certificate and therefore, he was liable to pay sales tax under the Central Sales Tax Act, 1956, at 7 percent, on turnover in respect of those sales. As against that decision, the assessee went up in appeal to the Tribunal. Before the Tribunal, two contentions were urged on behalf of the assessee, viz.

(1) That the sales in question took place in Rajasthan and as such no sales tax could be levied under the Madras General Sales Tax Act, 1959; and

(2) That the Appellate Assistant Commissioner was incompetent to enhance the tax levied by the Sales Tax Officer, as no such power had been conferred on him under the Madras General Sales Tax Act, 1939.

3. The Tribunal rejected both those contentions. Thereafter a revision was taken to the High Court. Before the High Court the two contentions that were advanced before the Tribunal were reiterated. The High Court rejected the contention of the assessee, namely, that the Appellate Assistant Commissioner was incompetent to enhance the tax levied by the Sales Tax Officer. The High Court opined that in the Central Sales Tax Act, 1956, the reference to the Madras sales tax law could only be to the 1939 Act and not to the 1959 Act. It further held that the Central Legislature was not

competent to enact that a law that the Madras Legislature may pass in further would be a part of its own law; a competent legislature may pass a legislation by a reference to some other law enacted by some other legislature and incorporate some of the provisions of those laws into its own law, but it cannot legislate by saying that a law that may be enacted by some other legislature in future will become a part of its own law, when enacted. It is not necessary for us, at present, to consider whether the decision of the Madras High Court is correct in view of the amendment of the Central Sales Tax Act by the Central Act 28 of 1969. The Central Act 28 of 1969 amended section 9 of the Central Sales Tax Act, 1956. That amended section 9 (2) reads thus;

"Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of appropriate State shall, on behalf of the Government of India, assess, collect and enforce payment of tax, including any penalty payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State : and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of or successor to, such business, transfer of liability of any firm or Hindu undivide family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly;

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."

Section 6 of Act 28 of 1969 provided :

"For section 9 of the principal Act, the following section shall be, and shall be deemed always to have been, substituted, namely"

4. Further, section 9 of that Act validated certain assessments and that section reads thus :

"9. (1) Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, any assessment levy or collection of any tax made or purporting to have been made, any action or thing taken or done in relation to such assessment, reassessment, levy or collection under the provisions of the principal Act before the 9th day of June, 1969, shall be deemed to be of valid and effective as if such assessment, reassessment, levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly -

(a) all acts, proceedings or things done or taken by the Government or by any officer of the Government or by any other authority in connection with the assessment, reassessment, levy or collection of such tax shall, for all purposes, be deemed to be,

and to have always been, done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax; and

(c) no court shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person -

(a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, any assessment, reassessment, levy or collection of tax referred to in sub-section (1), or

(b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the principal Act as amended by this Act."

5. Under the amended section 9(2) it is made clear that subject to the other provisions of the Central Sales Tax Act, as amended, and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of tax under the general sales tax law of the appropriate State shall on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under that Act as if the tax or penalty under the general sales tax law of the State concerned. In other words, the power conferred under the amended section 9(2) embraces all the powers that the assessing authority had under the sales tax law of the State in force during the relevant assessment year. Applying that provision to the facts of this case, the Appellate Assistant Commissioner time he decided the appeal of the assessee, to enhance the assessment because of the existence of such a power under the Madras General Sales Tax Act, 1959, though such a power was not available to him under the 1939 Act which was the sales tax law that 1956. In other words, the powers of the authorities in the State of Madras assessing under the General Sales Tax Act are those conferred on them under the Madras General Sales Tax Act, 1939, till the Madras General Tax Act, 1959, came into force and thereafter their powers are those conferred on them by the General Sales Tax Act, 1959. Thereafter, the enhancement made by the Appellate Assistant Commissioner was well within his powers.

6. For the reasons mentioned above, this appeal is allowed, the order of the High Court is set aside and that of the Tribunal restored. In the circumstances of this case, we direct the parties to bear their own costs both in this Court and in the High Court.

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