

State of Karnataka

Vs

Ayyanahalli Bakappa and Sons

Civil Appeal No. 79 of 1975

(CJI R. S. Pathak, Ranganath Misra JJ)

05.05.1988

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by special leave is directed against the order of the Karnataka High Court in a revision petition taken before it by the revenue under the Mysore Sales Tax Act, 1957. The respondent-assessee, a dealer under the Act made a return of its gross and taxable turnover for the year 1958-59 disclosing a gross turnover of Rs. 9,29,464.80 and a taxable turnover of Rs. 47,190.87. It maintained that sale to the tune of Rs. 8,79,210.09 was exempt from sales tax as the assessee was the seller under the second point in regard to safety matches and under the law, liability to pay tax was at the first point. The Commercial Tax Officer accepted the return. Later he reopened the assessment on the footing that a part of the turnover had escaped assessment, took steps under Section 12-A of the Act and included the portion representing sale of safety matches and raised an additional demand. Assessee's appeal was dismissed by the Deputy Commissioner of Commercial Taxes. In further appeal to the Tribunal, the majority view went in favour of the assessee and the additional demand was set aside. The Tribunal came to hold :

When there is an assessment, in our opinion, once under the Act passed according to law, the same stands as long as it is not set aside under the provisions of the Act. As long as it stands, it is not open the same authority to ignore the order and pass another order which cannot co-exist with the order that is already passed. It is legally inconceivable that two assessment orders on the same turnover can be passed. Thus we say unless the assessment order in respect of a particular turnover is not set aside, the same authority or the authority succeeding him cannot pass an order which can co-exist with the one that is already passed. Thus, we hold it is not open for an assessing authority to pass an order either under Section 12 or Section 12-A of the Act in respect of the same turnover regarding with an assessment order has already been passed against another person, as long as it is not set aside according to the provisions of the Act. Thus, in our opinion, having regard to the admitted fact that orders against the three depots assessing them for the same turnover under Section 5(3)(a) of the Act were passed, the authorities were wrong in having passed an assessment order under Section 12-A of the Act in respect of the same turnover against the appellant.

The revision taken by the State to the High Court against the order of the Tribunal was disposed of against the revenue by relying upon an earlier decision of the Court in *G. K. Chikanarasimhiah v. Assistant Commissioner of Commercial Taxes, Bangalore City Division, Bangalore* [(1971) 28 STC 98 (Mys HC)].

2. Two questions arise for consideration in this appeal. Firstly, whether the Commercial Tax Officer

was entitled to make a reassessment on the basis of change of opinion and secondly whether in the peculiar facts of the case when the same turnover had once been assessed under the Mysore Act by treating the three depots as dealers, a second set of assessment could be made.

3. We propose to take the second aspect first as if it is found that there had already been an assessment of the same turnover and reassessment thereof would not be permitted, the other question need not be gone into.

4. Counsel for the State has fairly conceded that during the year in question the three sale depots had already been registered as dealers and were assessed on the same turnover to tax which has already been collected. It is not disputed that sale of safety matches is liable to first point tax at the prescribed rate. Since one set of tax has already been collected from the depot holders at the point of sale of the assessee within the State, we see no justification to allow a second set of tax to be raised. In view of this finding, the answer to the second aspect has to be against the State. It is not necessary to get into the academic question as to whether the notice was sustainable in law. We leave that contention open to be examined in an appropriate case.

5. The appeal is accordingly dismissed. The parties are directed to bear their own costs.

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