

# **MYSORE HIGH COURT**

State of Mysore

Vs

Mysore Paper Mills

S.T.R.P. Nos. 19 and 21 of 1963, in case No. S.T.A. 61 of 1962-63

(K.S. Hegde and T.K. Tukol, JJ.)

27.11.1963

## **JUDGMENT**

**Hegde, J.**

1. These are petitions under Section 23 of the Mysore Sales Tax Act, 1957 to be hereinafter referred to as 'the Act'. Both these petitions arise from the decision of the Mysore Sales Tax Appellate Tribunal, Bangalore in Case No. STA 61/62-63. That case dealt with the assessment of the assessee under Section 8 of the Central Sales Tax Act, 1956 for the assessment year 1958-59. S.T.R.P. 19 of 1963 is filed by the State and S.T.R.P. 21 of 1963 is filed by the assessee.

2. We shall first take up S.T.R.P. 19 of 1963. The controversy in this petition is as to whether the assessee is entitled to deduct from his turnover the excise duty paid by it on the papers sold by him during the assessment year. The tribunal below has come to the conclusion that the assessee is entitled to deduct the excise duty paid by it from its turnover. The State is challenging the correctness of this conclusion.

3. Liability to pay tax under the Central Sales Tax Act is imposed under Section 6, Section 8 of that Act deals with the rates of tax on sales in the course of inter-State trade. Section 9 of that Act provides for levy and collection of tax imposed under Sections 6 and 8. Sub-Section (1) of Section 9 provides that the tax payable by any dealer under that Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in Sub-Section (3). Sub-Section (3) of that Section lays down :

"(3) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected 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, appeals, reviews, revisions, references penalties and compounding of offences, shall apply accordingly."

"Turnover" is defined as follows in Section 2(j) :

" 'Turnover' used in relation to the dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in the prescribed manner";

'Sale price' is defined in Section 2(h) as follows :

"(h) "Sale Price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any such charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;"

From these provisions it is clear that in determining the 'turnover' the excise duty paid cannot be deducted. Rule 11 of the Rules framed under the Central Sales Tax Act, 1956 provides for the determination of the turns over. That rule reads :

"11 (1) That period of turnover in relation to any dealer liable to pay tax under this Act shall be the same as the period in respect of which he is liable to submit returns under the general sales tax law of the appropriate State :

Provided that in relation to a dealer who is not liable to submit returns under the general sales tax law of the appropriate State, the period of turnover shall be a quarter ending on the 30th June, 30th September, 31st December and 31st March, as the case may be in a financial year.

(2) In determining the turnover of a dealer for the purposes of Section 8, there shall be deducted the following amounts from the aggregate of sale-prices namely :

(a) the amount arrived at by applying the following, formula :

Rate of tax x aggregate of sale prices/100 plus rate of tax

Provided that no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of Section 9-A has been otherwise deducted from the aggregate of sale-prices;

Explanation : - Where the turnover of a dealer is taxable at different rates, the formula shall be applied separately in respect of each portion of the turnover liable to a different rate of tax.

(b) the sale-price of all goods returned to the dealer by the purchaser of such goods within a period of three months from the date of delivery of the goods :

Provided that satisfactory evidence of such return of goods and such payment of the amount, by way of refund in cash or adjustment in accounts, is produced before the

prescribed authority."

Unlike Rule 6 of the Turnover and Assessment Rules framed under the Act, Rule 11 framed under the Central Sales Tax Act does not provide for the deduction of the excise duty paid. (See Rule 6(5)(j) of the rules framed under the Act). Prima facie, the definition, of the worth 'turnover' noticed above includes the entire 'sale price' as defined in the Central Sales Tax Act. That definition does not provide for any deduction of the excise duty paid. Nor even the rules relating to the determination of the 'turnover' provide for such deduction. That being so, the assessee is liable to pay sales tax on his entire turnover as determinate under the Central Sales Tax Act.

4. Sri Nanjundaswamy, the learned counsel for the assessee, contended that in view of Section 9(3) of the Central Sales Tax Act which prescribes that the tax leviable on the assessee may be levied in the same manner' as leviable under the Act, his client is entitled to fall back on Rule 6 of the Rules framed under the Act which rule permits the assessee to deduct the excise duty paid. Section 9(3) of the Central Sales Tax Act has nothing to do with the levy of the tax. It deals with the assessment and collection stage. The phrase 'in the same manner' found in Section 9(3) does not make applicable all the incidents of the local Sales Tax Act. What is contemplated by that phrase is, that the procedure of making an assessment, collection of tax is the same to laid down in the local Sales Tax Act. That provision attracts only such provisions of the local Act which relate to assessment (in the context computation) collection, enforcement of payment of tax including any penalty. In order to find out what the assessable turnover is, we must go back to the definition given in the Central Sales Tax Act, 1956. In our judgment, no assistance can be taken from Section 9(3) in support of the contention that excise duty paid can be deducted from the 'turnover' to be assessed.

5. Our conclusion in this regard finds support from the decision of the Madras High Court in *S. Mariappa Wadar v. State of Madras*<sup>1</sup>, Therein it was held that the tax was leviable either under Section 8(1) a under Section 8(2) on the 'turnover' as defined in the Central Sales Tax Act and not as defined in the Madras Central Sales Tax Act. Therefore, by the terms of Section 8, the assessee was not entitled to have the excise duty paid in respect of goods sold excluded from the 'turnover'. Dealing with that aspect of the case, this is what Srinivasan, J., who spoke for the Bench observed :

"Giving careful consideration to this argument it seems to us that it cannot be accepted. Firstly, the tax that is leviable either under Section 8(1) or 8(2) of the Act is on the turnover and in so far as the expression 'turnover' occurring in these provisions is concerned, it is the turnover under the Central Sales Tax Act and not that under the Madras General Sales Tax Act."

In that case also it was contended that in view of the phrase 'in the same manner' found in Section 9(3) the assessee was entitled to all the deductions that he was entitled to under the relevant State's Sales Tax Act. That contention was rejected with the following observations :

"We are asked to construe the expression 'in the same manner' in Section 9(3) of the Central Sales Tax Act on the analogy of the interpretation which the expression in like

manner' in Section 40 of the Income-tax Act would bear. We are unable to see any basis upon which the expression occurring in Section 40 of the Income-tax Act could be said to be comparable to the expression 'in the

<sup>1</sup>(1962) 13 STC 371 : AIR 1962 Mad 290

same manner' in Section 9(3) of the Central Sales Tax Act. Section 40 specifically enacts that the liability to tax on the guardian of a minor shall be limited to the extent to which the minor, if he were assessable, would be liable to tax. The quantum of the liability upon the guardian is equated to the liability of the beneficiary it tie was to be taxed independently. In Section 9(3), however, 'in the same manner' has reference to the procedure outlined by the local law being followed, but the liability and the quantum of tax being governed only by the Central Sales Tax Act and subject to the rules made there under. The two expressions referred to cannot possibly be equated and no assistance in interpreting the one can be derived from the other". (See page 381 (of STC) : (at pp. 294, 295 of AIR)).

The above view of the Madras High Court was accepted and adopted by the Kerala High Court in *Parvathi Mills (Private,) Ltd. v. State of Kerala*<sup>2</sup>, We are in respectful agreement with the view taken by the Madras and the Kerala High Courts. No decision taking a contrary view was brought to our notice.

6. The Tribunal below in arriving at the conclusion that the assessee was entitled to the deduction claimed has purported to rely on the decision of this Court in *M/s. Mysore Silk House v. State of Mysore*<sup>3</sup>, Therein this Court was considering the scope of Section 8(2) of the Central Sales Tax Act. In that case, this Court laid down that under Section 8 (2) of the Act the liability of a dealer, excepting as regards the minimum turnover will under no circumstances be more than what it would have been under the provisions of the appropriate State Law, had the disputed transactions related to intra-State Sales. Hence transactions which fail under Section 8(2) cannot be subjected to tax where they were not liable to be taxed under the Sales Tax Law of the State. In that case, this Court was not called upon to, nor did it, construe the scope of Section 9(3) of the Central Sales Tax Act. Herein we are not considering the ambit of Section 8(2) of the Central Sales Tax. On the other hand, the question for decision is whether while determining the 'turnover' we must deduct the excise duty paid. That question did not arise for decision in the case cited. Similarly, the assessee cannot take any assistance from the decisions of this Court in *K.V. Adinarayana Setty v. Commercial Tax Officer*<sup>4</sup>, *Abdul Hakeem Sahib v. Mysore Sales Tax Appellate Tribunal, Bangalore*<sup>5</sup>, *C.S. Nagarsia Setty v. Deputy Commr. of Commercial Taxes*<sup>6</sup>, and *Yadalam Lakshminarasimhaiah Selty and Sons v. State of Mysore*<sup>7</sup>, These decisions are not apposite for our present purpose. They bear on different principles of law.

7. In the result, S.T.R.P. 19 of 1963 is allowed and the order of the Tribunal below is set aside and that of the Assessing Authority restored. No costs.  
S.T.R.P. 21 of 1963 :

8. There is no merit in this revision petition. From the findings reached by the Tribunal, it is clear that sales tax was not specifically charged or collected. In the bills issued to the customers, sales tax was not separately mentioned. On the other hand, some incidentals were shown. That being

so, the petitioner is not entitled to the relief

<sup>2</sup>(1952) 13 STC 927 (Ker)

<sup>4</sup>(1963) 14 STC 587 (Mys)

<sup>3</sup>(1962) 40 Mys LJ 570

<sup>5</sup>(1963) 14 STC 578 (Mys)

<sup>6</sup>(1962) 13 STC 578 (Mys)

<sup>7</sup>(1962) 13 STC 583 (Mys)

claimed. The petition fails and the same is dismissed. No costs.

Ordered accordingly.