KARNATAKA HIGH COURT

K. Cheyyabba

Vs.

State Of Karnataka

W.P. 28 of 1976

(Srinivasa Iyengar and Rama Jois, JJ.)

22.03.1979

ORDER

Rama Jois, JJ.

1. In these four connected sales tax appeals presented by two dealers under section 24 of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act"), the following question of law arises for consideration :

> "Whether the appellants, who, as dealers, purchased sheep and goats in the course of their business, during the assessment years 1970-71 and 1971-72, under circumstances in which no tax was leviable on the sale price under section 5 of the Act and who slaughtered the sheep and goats so purchased to produce mutton, hides and skins as part of their business activity were liable to pay tax on the purchase price under section 6 of the Act ?"

2. The brief and undisputed facts of these cases are these : The appellants are dealers as defined in section 2(1)(k) of the Act. Their business is to purchase sheep and goats and to slaughter them and sell the mutton so derived as also the hides and skins. Sheep and goats are taxable goods under the Act in view of the definition of the word "goods" contained in section 2(1)(m) of the Act, which reads as follows :

> "2. (1)(m) 'goods' means all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes livestock, all materials, commodities, and articles (including those to be used in the fitting out, improvement or repairs of movable property) and all growing crops, grass or things attached to, or forming part of, the land which are agreed to be served before sale or under the contract of sale;"

The tax payable at the relevant point of time was 3 per cent on the sale price under section 5(1) of the Act. But under sub-section (5) of section 5 of dealer whose total turnover in any year is less than Rs. 25,000 is not liable to pay tax during that year under sub-section (1) of section 5 of the Act. It is common ground that the appellants, during the relevant years, have purchased sheep and goats from dealers, who are exempted from paying tax on sale price under sub-section (5) of section 5 of the Act, i.e., in a circumstance under which no tax is leviable under section 5(1) of the Act. On these facts, the Additional Commercial Tax Officer, Mangalore, held that the appellants are liable to pay tax on the purchase price of sheep and goats which they purchased during the assessment years 1970-71 and 1971-72 respectively, as the appellants disposed of the sheep and goats by slaughtering them and selling the mutton, hides and skins so derived in view of section 6 of the Act. On appeal, the Deputy Commissioner of Commercial Taxes (Appeals), Mangalore, set aside the assessment orders and held that the appellants are not liable to pay tax as they had slaughtered the sheep and goats purchased by them; none of the conditions specified in section 6 of the Act which alone can bring them to tax liability existed. The Commissioner of Commercial Taxes, on considering the orders of the Deputy Commissioner, was of the view that the orders of the Deputy Commissioner were prejudicial to the revenue and, therefore, issued notices to the appellants invoking his suo motu powers under section 22A of the Act. After giving opportunity to the appellants, he held that the appellants were liable to pay tax on the purchase price of sheep and goats during the relevant years and brought them to tax under section 6 of the Act. He assessed the purchase turnovers of Rs. 2,18,500 and Rs. 2,83,740 of the appellant in S.T.A. Nos. 28 and 29 of 1976 to tax for the assessment years 1970-71 and 1971-72 respectively. Similarly, he held that the purchase turnover of Rs. 1,40,300 and Rs. 1,75,000 of the appellant in S.T.A. Nos. 15 and 16 of 1976 for the assessment years 1970-71 and 1971-72 respectively, was liable to tax under section 6 of the Act. Aggrieved by these orders, the appellants have presented these appeals under section 24 of the Act.

3. Sri K. Srinivasan and Sri S. P. Bhat, the learned counsel appeared for the appellants, and Sri Rajendra Babu, the learned High Court Government Pleader, appeared for the department, and addressed arguments in support of their respective cases. According to the appellants, they are not liable to tax under section 6 of the Act, whereas, according to the department, the appellants are liable to tax and the Commissioner was right in passing the orders invoking his suo motu powers. In these circumstances, the question of law set out earlier arises for consideration in these appeals.

4. According to the appellants, a dealer become liable to pay tax on the purchase price under section 6 of the Act in the following circumstances :

(i) The purchase of taxable goods by a dealer -
(a) in the course of his business; and
(b) under circumstances when no tax is leviable under Section 5;
(ii) If such dealer -

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or
(b) disposes of in any manner other than by sale in the State; or
(c) despatches them to a place outside the State except as a result of sale or purchase in the course of inter-State trade or commerce.

In these cases, the first condition is satisfied as the appellants admittedly are dealers in taxable goods, namely, sheep and goats, and they have purchased such goods in the course of their business as also under circumstances when no tax is leviable under section 5 of the Act as they purchased them from dealers who are exempted from paying tax under sub-section (5) of section 5 of the Act. As regards the existence of the second condition, which is also necessary to incur the liability to pay tax, the case of the appellants is that they have not done any one of the activities referred to above, which alone brings their purchase price to tax liability under section 6 of the Act.

5. One of the activities which attracts the tax liability under section 6 of the Act is consuming of goods in the manufacture of other goods. On this question, in the orders under appeal, the Commissioner has categorically held that the slaughtering of sheep and goats to secure mutton, hides and skins does not involve the process of manufacture. The learned counsel appearing for the appellants also relied on the decision of the *Kerala High Court in Ismail v. State of Kerala*[1] in which a similar view has been taken. Therefore, in these cases, we shall proceed on the basis that the appellants have not carried on the activity of manufacture when they slaughtered the sheep and goats and secured mutton, hides and skins.

6. The Commissioner, however, has held that the tax liability arises for the reason that the appellants by slaughtering the sheep and goats purchased by them to secure mutton, hides and skins, "disposed of" the goods otherwise than by sale in the State. It is the correctness of this view taken by the Commissioner that is questioned by the appellants in these appeals. The learned counsel for the appellants submitted that, in order to attract tax liability on the ground that the goods purchased had been "disposed of", there must be transfer of title to the goods by any mode other than sale and as their act of slaughtering sheep and goats to secure mutton and hides and skins does not result in any transfer of title in the goods to any other person, the Commissioner was wrong in saying that the appellants in so doing disposed of the goods otherwise than by sale in the State and, consequently, liable to pay tax under section 6 of the Act. In support of the contention, the appellants relied on a Division Bench decision of this Court in *State v. Raghurama Shetty*[2] to which one of us was a party (Srinivasa Iyengar, J.), in which it was held that the words "disposed of" used in section 6 means transfer of title in the goods to another otherwise than by sale.

7. The learned counsel for the respondent submitted that as the words "disposed of" mean to "to finish with", it must be held that the appellants by slaughtering the sheep and goats finished them, which means they have disposed of the goods in a manner otherwise than by sale in the State. In support of this submission, he relied on the decision of the Supreme Court in *Goli*

Eswariah v. Commissioner of Gift-tax[3], In the said decision, while rejecting a contention that the word "disposition" used in section 2(xxiv) of the Gift-tax Act also includes an unilateral act which diminishes the property, held that the word "disposition" used in that Act means bilateral or multilateral acts such as conveyance, assignment, settlement, delivery, etc., and cannot be understood to mean "disposed of", which would mean that even if a man destroys or abandons his property, it would become a gift. We do not think that the said decision can be taken as an authority for having held conclusively that the words "disposed of" always mean destruction also. When a word or words carry more than one meaning and they have not been defined in the relevant law, the meaning which is most appropriate in the context should be given. In the Raghurama Shetty's case [[1975] 35 S.T.C. 360; (1975) 2 Kar. L.J. 185], this court, after setting out the meaning of the words "disposed of", as given in Corpus Juris Secundum, which

[1][1978] 42 S.T.C. 217]

3 AIR 1970 SC. 17222, 1726 para 12

[2][1975] 35 S.T.C. 360; (1975) 2 Kar. L.J. 185

includes "to finish with", came to the conclusion that, in the context in which it is used in section 6, it means transfer of title in the goods to any other person in the State otherwise than by sale. The said direct decision on the point is binding on us. The view taken by the Commissioner, which is contrary to the ratio of that decision, cannot be sustained. Therefore, it follows, the ground on which the Commissioner has held that the appellants are liable to tax cannot be sustained, in view of the decision in the Raghurama Shetty's case [[1975] 35 S.T.C. 360; (1975) 2 Kar. L.J. 185]. This view should have resulted in the annulment of the orders of the Commissioner. But, in our opinion, the orders of the Commissioner have got to be sustained in view of the undisputed facts, on a correct interpretation of section 6 of the Act. Section 6 of the Act, excluding the proviso, which is not relevant for these cases, reads as follows :

> "6. Levy of purchase tax under certain circumstances. - Subject to the provisions of sub-section (5) of section 5, every dealer who in the course of his business purchases any taxable goods in circumstances in which no tax under section 5 is leviable on the sale price of such goods and,
>
> (i) either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State, or
>
> (ii) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-Sate trade or commerce,
>
> shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under section 5 : ...."
>
> A careful and proper analysis of section 6 of the Act discloses that the purchase turnover of a dealer becomes taxable under the following circumstances : If, after having purchased the goods in the course of his business and under circumstances in which no tax is leviable under section 5, he does any one of the following acts with reference to such goods :
>
> (i) consumes the goods in the manufacture of other goods for sale;

(ii) consumes the goods otherwise than in the process of manufacture;
(iii) disposes of the goods otherwise than by sale in the State;
(iv) despatches the goods outside the State otherwise than in the course of inter-State trade or commerce.

In these cases, the act of the appellants in slaughtering the sheep and goats, to secure mutton, hides and skins after they purchased these sheep and goats in the course of their business, does not fall under items (i), (iii) and (iv) aforesaid. However, the question that arises for consideration is, whether or not, by that act, the appellants can be said to have consumed the goods otherwise than in the process of manufacture, falling under item (ii) mentioned above.

8. In order to answer the above question, it is useful to ascertain in the first instance the meaning of the word "consumption" used in section 6 of the Act. Even, on the wording section 6, the activity of bringing into existence other goods by the process of manufacture, out of the goods purchased, amounts to consumption and attracts the tax liability. Therefore, the conversion of the purchased goods into any other commercial commodity, though not by the process of manufacture, also does result in the consumption of the goods purchased and production of different goods. This is also clear from the decision of the Supreme Court in *Anwarkhan Mehboob Co. v. State of Bombay*[4], In the said case, the question that arose for consideration was whether the conversion of raw tobacco into bidi pattis by removing stem and dust, which, in turn, is required for the manufacture of bidis amounted to consumption of raw tobacco and, consequently, gave rise to tax liability under provisions of the Bombay Sales Tax Act. It was contended for the petitioner therein that the tobacco purchased by him was not delivered in the State of Bombay for the purpose of consumption and all that was done in the State of Bombay before its despatch to Madhya Pradesh was to remove the stem and dust of the tobacco and such removal of stem and dust did not amount to consumption of tobacco. It was argued that the tobacco despatched from the State of Bombay after the removal of waste material was not a commercially different article from the tobacco purchased from the cultivators, but it was only converted into bidi pattis for immediate use in the manufacture of bidis. The Supreme Court held that raw tobacco and cleaned tobacco converted into bidi pattis are different and distinct commercial articles. Thereafter, they considered whether the conversion of raw tobacco into bidi pattis amounted to consumption of raw tobacco. They were construing the word "consumption" as used in explanation to article 286 of the Constitution. The Supreme Court held that by the conversion of one type of goods into another type of goods, which is commercially different, the former gets consumed and the latter gets produced. The relevant portions of the judgment contained in paras 9 and 11 read as follows :

"(9) ..... The act of consumption with which people are most familiar occurs when they eat, or drink or smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food; we speak of people consuming tea or coffee or water or wine, when they drink these articles; we speak of people consuming

cigars or cigarettes or bidis, when they smoke these. The production of wealth, as economists put it, consists in the creation of 'utilities'. Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the 'utilisation' thereof. For each commodity, there is ordinarily what is generally considered to be the final act of consumption. For some commodities, there may be even more than one kind of final consumption ....

But the fact that there is for each commodity what may be considered ordinarily to be the final act of consumption, should not make us forget that in reaching the stage at which this final act of consumption takes place the commodity may pass through different stages of production and, for such different stages, there would exist one or more intermediate acts of consumption.

(10) .... This conversion of a commodity into a different commercial commodity by subjecting it to some processing is consumption within the meaning of the explanation to article 286 no less than the final act of user when no distinct commodity is being brought into existence but what was brought into existence is being used up ....

(11) It must therefore be held on the facts of this case that when tobacco was delivered in the State of Bombay for the purpose of changing it into a commercially different articles, viz., bidi patti, the delivery was for the purpose of

[4] AIR 1961 SC

consumption. The purchases in this case therefore fall within the meaning of explanation to article 286(1)(a) and must be held to have taken place inside the State of Bombay."

In our opinion, the word "consumption" used in section 6 of the Act also means not only the ultimate use of the article, but also the use of one article for producing another article. Therefore, the appellants, who purchased livestock, namely, sheep and goats, when they slaughtered them and secured mutton, hides and skins, they consumed the former to produce the latter. Assuming that the process cannot be described as a process of manufacture and, consequently, it cannot be said that the sheep and goats were consumed by a process of manufacture to produce mutton, hides and skins, it has to be held that the appellants consumed sheep and goats to produce mutton, hides and skins otherwise than by manufacture, which are commercially different commodities. Hides and skins find a place as items No. 3 in the Fourth Schedule to the Act as a specific type of goods and are made subject to levy of tax at 2 per cent at the purchase point by the last dealer in the State. Meat, which includes mutton, is a specific item of goods exempted from tax except when sold in sealed containers, which finds a place at item No. 6 of the Fifth Schedule. Therefore, it is clear that mutton is a commercially different commodity from sheep and goats notwithstanding the fact that it is exempted from tax when sold without being placed in sealed containers. The learned counsel for the appellants also could not and did not dispute that mutton, hides and skins are commercially different goods than sheep and goats. Thus, it may be seen that the appellants, who purchased sheep and goats, consumed them to produce mutton, hides and skins, which are commercially different goods in furtherance of their business activity. In other words, they consumed the goods otherwise

than in the manufacture of other goods. Therefore, they are liable to pay tax on the purchase price of sheep and goats under section 6 of the Act.

9. (i) The learned counsel for the appellants, however, asked us to construe section 6 differently. They argued that section 6 should be interpreted to mean that it is only the act of manufacturing of other goods out of the goods purchased, either for sale or otherwise, which gives rise to the liability to pay tax under section 6 and, it is not correct to interpret the section to mean that consuming goods otherwise than in the manufacture of other goods for sale also attracts the tax liability. They argued that, on such construction, the appellants are not liable to tax as the Commissioner has held that the process of slaughtering of sheep and goats and securing mutton, hides and skins is not a manufacturing process.

(ii) In our opinion, on the wording of section 6, the liability to pay tax arises on the part of a dealer if he either consumed such goods in the manufacture of other goods for sale or if such goods are consumed otherwise than in manufacture of other goods by him, which necessarily includes the production of different commercial articles. This is only the reasonable way of construing the wording of section 6 of the Act. Therefore, in our opinion, the clear meaning of the relevant part of section 6 is as follows :
(i) If the goods purchased in the course of the business of a dealer are consumed in producing other goods by way of manufacture for sale; or
(ii) If the goods purchased in the course of the business of a dealer are consumed otherwise, i.e., otherwise than in the process of manufacture, to wit by producing other goods;
the liability to pay by tax arises. Therefore, if it is established that the taxable goods were purchased by a dealer in the course of his business and in circumstances under which no tax was leviable under section 5 of the Act, he becomes liable to pay tax if he consumes those goods to manufacture other goods for sale or he produces other goods otherwise than by the process of manufacture.

10. We receive full support for our view on the interpretation of section 6 of the Act from the decision of the Supreme Court in *Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh*[5], In the said case, the appellant was a building contractor. He had purchased the building materials and used them in the construction of a building. His contention with reference to the provision of section 7 of the Madhya Pradesh General Sales Tax Act, 1958, which is in pari materia with section 6 of the Act, was that as the building materials purchased by him were not consumed in the process of manufacture, they were not liable to tax. The contention was rejected. The relevant portion of the judgment is at paras 7 and 8, which reads as follows :

"7. Counsel for the appellants urged that in the cases of H. Abdul Bakshi and Bros. and L. M. S. Sadak Thamby and Company [[1963] 14 S.T.C. 753], the assesses were carrying on the business of selling goods manufactured by them and for the purpose of manufacturing

those goods certain other goods were purchased and consumed in the process of manufacture, but here the goods are not consumed in producing another commodity for sale and, on that account, the two cases are distinguishable. The answer to that argument must be sought in the terms of section 7. The phraseology used in that section is somewhat involved, but the meaning of the section is fairly plain. Where no sales tax is payable under section 6 on the sale price of the goods, purchase tax is payable by a dealer who buys taxable goods in the course of his business, and (1) either consumes such goods in the manufacture of other goods for sale, or (2) consumes such goods otherwise, or (3) disposes of such goods in any manner other than by way of sale in the State, or (4) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. The assessees are registered as dealers and they have purchased building materials in the course of their business; the building materials are taxable under the Act, and the appellants have consumed the materials otherwise than in the manufacture of goods for sale and for a profit-motive. On the plain words of section 7, the purchase price if taxable.

8. Mr. Chagla for the appellants urged that the expression 'or otherwise' is intended to denote a conjunctive introducing a specific alternative to the words 'for sale' immediately preceding. The clause in which it occurs means, says Mr. Chagla, that by Section 7, the price paid for buying goods consumed in the manufacture of other goods, intended to be sold or otherwise disposed of, alone is taxable. We do not think that that is a reasonable interpretation of the expression 'either consumes such goods in the manufacture of other goods for sale or otherwise'. It is intended by the legislature that consumption of goods renders the price paid for their

[5] AIR 1976 SC. 1276

purchase taxable, if the goods are used in the manufacture of other goods for sale of if the goods are consumed otherwise".

It may be seen from para 8 aforesaid, a contention similar to the one raised in this case which was raised in regard to the interpretation of section 7 of the Madhya Pradesh Act was negatived and it was held that if the goods purchased are consumed in the process of manufacture of other goods or are consumed otherwise, the liability to pay tax arises. Therefore, it is not possible to accede to the contention urged for the appellants. Therefore, in our opinion, on a correct interpretation of section 6 of the Act, the appellants were liable to pay tax under section 6 of the Act as they had consumed the goods otherwise than in the manufacture of other goods, namely, by producing commercially different articles such as mutton, hides and skins.

11. The learned counsel for the appellants, however, urged that, in the Raghurama Shetty's case [1975] 35 S.T.C. 360; (1975) 2 Kar. L.J. 185], this Court has held that conversion of paddy into rice does not attract the tax liability under section 6 and the said decision holds goods for these cases also. We do not agree. In that case, as is clear from paras 7 and 12, it was held that by dehusking paddy no new and different article emerged. In this case, by slaughtering sheep and

goats, different commercial articles, viz., mutton, hides and skins, are produced. Further, in that case, the question did not arise in the form in which it arises for consideration in these cases. Therefore, there is nothing in that decision which prevents us from interpreting section 6, as we have done in this case, which is in conformity with the interpretation placed by the Supreme Court on section 7 of the Madhya Pradesh Act, the wording of which is similar to section 6 of the Act.

12. Lastly, the learned counsel for the appellants submitted that as the ground on which the liability to pay tax under section 6 of the Act is fixed on the appellants is untenable, in view of the decision in the Raghurama Shetty's case [[1975] 35 S.T.C. 360; (1975) 2 Kar. L.J. 185], the orders should be set aside and should not be sustained even if the interpretation placed by us on section 6 of the Act is a possible one. We are not impressed by this argument. In these cases, facts are not in dispute. The question of law set out by the appellants at question No. (1), in S.T.A. Nos. 28 and 29 of 1976, as arising for consideration in these appeals, reads as follows :

> "(1) On the facts and in the circumstances of the appellant's case, whether the Commissioner of Commercial Taxes was right in law in holding that the appellant's purchase turnover of sheep and goats was liable to tax under section 6 of the Karnataka Sales Tax Act, 1957 ?"

Similarly, the question of law as set out in question No. (1), in S.T.A. Nos. 15 and 16 of 1976, as arising for consideration in these appeals, reads as follows :

> "(1) Whether, on the facts and in the circumstances of the case, the Commissioner of Commercial Taxes is justified in holding that the purchase turnover of Rs. 1,40,300 relating to sheep and goats in liable to be taxed under the provisions of section 6 of the Karnataka Sales Tax Act, 1957 ?"

Therefore, the upholding or annulment of the levy must depend on the interpretation of section 6 of the Act. Sub-section (3) of section 24 of the Act empowers this Court to pass such orders as it thinks fit after giving the concerned party a reasonable opportunity of being heard in the matter. Therefore, it is difficult to accede to the submission that though the appellants were liable to pay the tax levied on them by the orders under appeal, on a correct interpretation of section 6 of the Act, the orders should be set aside. The conclusion of the Commissioner is correct though the reasoning may be wrong. Therefore, we reject the contention of the appellants and uphold the orders of the Commissioner though on a ground different from the one on which the order were based. Our interpretation section 6 of the Act, in so far as it is necessary for these cases, yields the following results :

> (i) A dealer who purchases taxable goods in the course of business and under circumstances in which no tax is leviable under section 5 of the Act becomes liable to pay

tax on the purchase price of the goods under section 6 of the Act-
(a) if he consumes the goods so purchased to manufacture other goods for sale; or
(b) if he consumes such goods otherwise than by manufacture to wit to produce other goods.
(ii) In the light of the aforesaid interpretation we hold that the appellants, who, as dealers, purchased sheep and goats in the course of their business during the assessment years 1970-71 and 1971-72, under circumstances in which no tax was leviable under section 5 of the Act, were liable to pay tax on the purchase price under section 6 of the Act, as they consumed them by way of slaughtering them to produce mutton, hides and skins as part of their business activity.

13. The appeals are dismissed. In the circumstances, there will be no order as to costs.

14. Appeals dismissed.

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