State Of Karnataka vs B.M. Ashraf & Co on 20 October, 1997

Equivalent citations: AIR 1998 SUPREME COURT 63, 1997 (8) SCC 468, 1997 AIR SCW 4011, (1997) 6 SCALE 425, (1997) 9 SUPREME 13, (1997) 8 JT 458 (SC), 1997 ( ) STI 298, 1997 (8) JT 458, 1998 (1) UPTC 30, (1998) 108 STC 328, 1998 UPTC 1 30, (1997) 107 STC 571, (1998) 44 KANTLJ(TRIB) 114

Author: B. N. Kirpal

Bench: B. N. Kirpal

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
B.M. ASHRAF & CO.

DATE OF JUDGMENT: 20/10/1997

BENCH:
S. C. KIRPAL, B. N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T KIRPAL, J.

The respondent is a registered dealer under the provisions of Karnataka Sales Tax Act, 1957 (hereinafter referred to as 'the Act') and the only question which arises for consideration in this appeal by special leave is whether it is liable to pay purchase tax under the provisions of Section 6 of the said Act.

The respondent had purchase fish oil from un-registered dealers within the State of Karnataka. It, in turn, sold the said oil to M/s. Kalbhavi Venkatarao & Bros. (hereinafter referred to as "Kalbhavi") who purchased the said oil in the order to comply with the export from its buyer in a foreign

country.

In respect to the assessment year 1.9.78 to 31.8.79, the respondent clamed exemption from payment of sales tax on sales made to Kalbhavi as the export sales of the goods referred to under Section 5(3) of Central Sales Tax Act, 1957. This claim was allowed by the assessing authority but he came to the conclusion that the transaction of respondent of purchasing the fish oil from un-registered dealers would attract the levy assessment was made, levying purchase tax on the purchase of fish oil, made by the respondent which, in turn, had been sold to Kalbhavi.

An appeal was filed before the Deputy Commissioner of Commercial Taxes, Mangalore by the respondent but without success. Its second appeal to the Karnataka Appellate Tribunal, Bangalore was also dismissed with the Tribunal confirming the Order of the Assessing Authority in treating the transaction of purchase of fish oil as attracting the provisions of Section 6 of the Act.

The decision of the Tribunal was challenged by the respondent in a Revision Petition filed in the High Court. The High Court, interpreted Section 6 of the Act and came to the conclusion that the purchase of fish oil, which was sold by the respondent, did not attract purchase tax under Section 6 of the Act inasmuch as the purchases made by the respondent were sold within the State of Karnataka and as such the ingredients of Section 6 of the Act, so as to make the purchase taxable, were not attracted.

Having heard learned counsel for the appellant, we are of the opinion that the conclusion of the High Court that no purchase tax was payable by the respondent, on the facts and under circumstances of the present case, was not correct. As we shall presently see on the correct interpretation of the provisions of Section 6 of the Act read with Section 5 of the Central Sales Tax Act, the purchase of fish oil made by the respondent and sold to Kalbhavi would attract the levy of purchase tax.

It is appropriate to refer to Section 6 of the Act and Section 5 of the Central Sales Tax Act which read as under:

> "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 on the manufacture of other goods for sale or otherwise [or consumes 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-state 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:

Provided that this section shall not apply-

(i) in respect of sale or purchase of goods specified in the Fourth Schedule-

[a] which are taxable at the point of purchase; and [b] which have already been subjected to tax under sub-

section (4) of Section 5.]

(ii) in respect of sale or purchase of goods specified in the Second Schedule which have already been subjected to tax under clause (a) of sub-

section (3 of Section 5].

[(iii) XXXXXXX].

[(iv) XXXXXXX].

[Provided further that the tax payable under this section on the purchase of butter and ghee shall be calculated at the rate of two per cent].

[(v) in respect of the purchase of cocoa pods and cocoa beans by a co-

operative Society registered under the Karnataka Co-operative Societies Act, 1959.] Explanation - For the purpose of this section "consumes such goods in the manufacture" shall include goods consumed for ancillary purpose in or for such manufacture.] Section 5 of the Central Sales Tax Act reads as follows:

> When is a sale or purchase of goods said to take place in the course of import or export.-(1) A sale or purchase of goods shall be deemed to take place in the course of export of goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India. (2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.
>
> (3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if

such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

Section 6, on analysis, provides as follows in order that purchase tax can be levied:-

i) person who purchases the goods, is a dealer.

ii) the purchase is made by dealer in the course of his business;

iii) the goods purchased are taxable goods;

iv) such purchase is in circumstances in which no tax under Section 5 is leviable on the sale price of such goods; and

v) the dealer either

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) consumes such goods otherwise; or

(c) disposes of such goods in any manner other than by way of sale in the State or;

(d) 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.

From the aforesaid, it will be clear that if the purchased goods are disposed of by way of sale within the State or are sold in the course of inter-state trade or commerce, then no purchase tax is leviable.

It is pertinent to note that whereas intra-state sale or inter-state sale would be a reason for purchase tax not being levied but sale in the course of export would not exclude the applicability of the levy of purchase tax under Section 6 of the Act. The sale by the respondent to Kalbhavi is the last sale preceding the sale occasioning the export of those goods out of the territory of India and is, therefore, deemed to be sale in the course of export as envisaged by Section 5(3) of the Central Sales Tax Act. The sale by Kalbhavi to the foreign purchaser was also a sale in the course of export falling under Section 5(1) of the Central Sales Tax Act. Inasmuch as the sale by the respondent to Kalbhavi was a sale in the course of its export, therefore, no tax was levlied under Section 5 of the Act.

The High Court while holding that the purchase transactions by the respondent were of goods on which no tax was leviable under Section 5 of the Act and that by virtue of Section 5(3) of the Central Sales Tax Act read with Article 286 of the Constitution of India, the sale by the respondent to Kalbhavi was not taxable nevertheless came to the conclusion that the respondent had sold the fish oil to Kalbhavi within the state of Karnataka and, therefore, this would be regarded as a sale as "sale in the State" under Section 6(1) of the Act and, therefore, exempt from levy of purchase tax.

In our opinion, there is a fallacy in aforesaid reasoning of the High Court. The words "sale in the State"

> occurring in Section 6(i) of the Act would refer to "intra- state" sale in contradistinction to "sale in the course of inter-state trade or commerce" as referred to in Clause (ii) of Section 6. It has been accepted by the High Court and, it is not disputed, that the sale in the present case to Kalbhavi falls under Section 5(3) of the Central Sales Tax Act. This, therefore, is a sale in the course of export and ipso facto cannot be regarded as intra-state sale. It is to be borne in mind that in the case of inter-state trade sale or sale in the course of export, the property in the goods may stand transferred within the State but merely because the passing of title or sale takes place in a State would not detract it from its character as a inter-state or export sale. In this connection, it will be appropriate to refer to the decision of this Court in THE BENGAL IMMUNITY COMPANY LIMITED V. THE STATE OF BIHAR AND OTHERS, [1995] VI S.T.C.446. While examining the scope and ambit of Article 286 of the Constitution and, in particular, the effect of sale of sale qua inter-state sale, it was observed at page 481 as follows:
>
> "The truth is that what is an inter-state sale or purchase continues to be so irrespective of the State where the sale is to be located either under the general law when it is finally determined what the general law is or by the fiction created by the Explanation to Article 286. The sale of a sale or purchase is wholly irrelevant as regards it inter-State character."

Similarly sale is irrelevant as regards the sales being in the course of export, as in the present case. In the context of sales tax law, the expression "sale in the State"

> occurring in Section 6 can only mean a local sale or a intra-state sale as opposed to sale in the course of export sale or a intra-state sale as opposed to sale in the course of export or in the course of inter-state trade or commerce. Therefore, wherever, there is a sale in the course of export or an inter-state sale then, that would not be regarded as a "sale in the State" falling under Section 6(1) of the Act and, therefore, sale by the respondent to Kalbhavi, which was admittedly a sale in the course of export under Section 5(3) would not be regarded as "sale in the State."

The High Court, while allowing the respondent's revision, had placed reliance on the decision of this Court in the case of MURLI MANOHAR & CO. AND ANOTHER VS. STATE OF HARYANA AND ANOTHER, [1991] 80 S.T.C. 79. In that case the registered dealer had purchased raw material without paying tax against declaration on the basis of registration certificate. From that raw material certain goods were manufactured and sold to other dealers who, in turn, exported the goods outside India. The question which arose was whether the dealer was liable to pay purchase tax on the raw material under Section 9(1) of the Haryana General Sales Tax Act, 1973. This Court had held that the registered dealers were not entitled to exemption under Section 9(1) of the Haryana General Sales Tax Act, 1973 because the sales made by them were not in the course of export outside the territory

of India within the meaning of Section 5(1) of the Central Sales Tax Act. It may appear that this decision would support the dealer but the provisions of Section 9 of the Hryana Sales Tax Act and Section 6 of the Act, with which we are concerned in the present case, are different with regard to one important and relevant circumstance. Section 9(1) of the Haryana General Sales Tax Act which was under consideration in Murli Manohar's case (supra) excluded from it's purview the purchase of goods which were sold either out of State or in the course of inter-state trade or commerce of "in the course of export out of territory of India within the meaning of sub-section (1) of Section 5 of the Central Sales Tax Act, 1956". After referring to the decision in Mod. Serajuddin Vs. The State of Orissa, 36 S.T.C. 136, it was noticed that sub-section (3) was inserted in Section 5 of the Central Sales Tax Act so as to regard penultimate sale of purchases in the course of export. The purchases in question in Murli Manohar's case (supra) were not regarded as sales in the course of export within the meaning of Section 5(1) of the Central Sales Tax Act but were regarded as sales falling under the purview of Section 5(3) of the Central Sales Tax Act. Section 9(1) of the Haryana Sales Tax Act had referred to the export sales envisaged by Section 65(1) of the Central Sales Tax Act and not the export sales falling within the purview of Section 5(3). This distinction and its effect were clearly brought out in the Murli Manohar's case (supra) ar page 93 as follows:

> "It will be convenient first to dispose of the contention dealt with by the High Court. For the purposes of this argument we shall assume that the sale made by the assesses were "penultimate sales"

which would fall within the purview of section 5(3) of the Central Sales Tax Act. The argument on behalf of the Revenue, which was found favour with the High Court, is that section 9(1) exempts only sales made in the course of export within the meaning of Section 5(1) of the Central Sales Act but not those under Section 5(3) of the said Act. After careful consideration we think that this argument was rightly accepted by the High Court. In the first place there is no dispute before us that section 5(3) covers a category of cases which would not otherwise have come within the purview of section 5(1), as explained in Mod. Serajuddin's case [1975] 36 STC 136 (SC). The language of section 9(1)(a)(ii)-later 9(1)(b)-using the words "within the meaning of sub-

section (1) of Section 5 of the Central Sales Tax Act, 1956" has to be given full meaning; in other words, the exemption under section 9(1) has to be restricted only to export sales falling within the scope of section 5(1). It seems clear, from the circumstances referred to below, that the Legislature deliberately used these words and intended to give a restricted operation to section 9(1)(a)(ii) and (b). These circumstances are:

> 1. Section 9(1)(a)(ii), as originally framed, merely uses the words "in the course of export outside the territory of India".

Clause 9(1)(b) referred to cases where raw materials were purchased and exported and the word "export" was defined in Section 2(e) as meaning "the taking out of goods from the State to any place outside it otherwise than by way of sale in the course of inter-state trade or commerce." Act 44 of 1976 amended the definition of "export" in section 2(e) by adding the wide words "or in the course of export out of the territory of India" with effect from April 1. 976. But the same Act narrowed down

the scope of clause (a)(ii) by adding the restrictive words at the end of the clause.

2. If a reference is made to section 24, one finds that section 24(1)(iii) refers again to sub-

section (1) of section 5 of the Central Sales Tax Act. However, the language of the two provisoes simultaneously introduced in section 24(1)(a) and (b) by Act 3 of 1983 makes interesting reading. The proviso to clause (a) refers only to "sale by him in the course of export outside the territory of India within the meaning of section 5 of the Central Sales Tax Act, 1956", whereas the proviso to clause (b) refers to "sale by him in the course of export outside the territory of India within the meaning of sub-section (3) of section 5 of the Central Sales Tax Act, 1956". Thus the statute, within the same provision, has made a distinction between a sale in the course of export within the meaning of section 5 and such a sale within the meaning of section 5(3).

3. When we turn to section 27 next, we find two provisoes introduced in section 27(1)(iv)(a) by Act 44 of 1976, the same amending Act that introduced the extra words at the end of section 9(1)(a)(ii). These provisoes make a marked contrast between sales falling under sub-

section (1) and those falling under sub-section (3) of section 5 of the Central Sales Tax Act.

4. As will be seen from the extract of the legislative amendments set out earlier the Legislature has subsequently deleted the reference to sub-section (3) of section 5 in section 9(1)(b). However, this amendment, which has been made both in section 9 and in section 24 by Act 1 of 1988 has not been given any retrospective effect.

Considering that the legislation is replete with instances of retrospective effect (in some cases even to as early a date as September 7, 1955), the failure or omission to give any retrospective effect to the amendment to section 9 in this regard is an eloquent pointer to the intention of the Legislature.

In view of the circumstances outlined above, we are of the opinion that the High Court was right in concluding that the assessee was not entitled to the exemption under Section 9 because the sales made by him were not sales in the course of export outside the territory f India within the meaning of section 5(1) of the Central Sales Tax Act."

If was further held that the goods sold either could be intra-state sale, inter-state sale or sale in the course of export within the meaning of section 5(1) of the Central Sales Tax Act. Having come to the conclusion that the sale was not in the course of export within the meaning of Section 5(1) of the Central Sales Tax Act and it was also not a local sale, it was concluded that the sale in question was inter-state sale and, therefore, would fall within the exemption contained under Section 9(1) of the Haryana Sales Tax Act. Such a question does not arise in the present case because whereas in Murli Manohar's case (supra) the goods had gone out of State of Haryana prior to its export from India, in the present case, according to the learned counsel for the appellant, Kalbhavi exported the goods from Mangalore i.e. from within the State of Karnataka. There was thus no occasion of movement of goods from one State to another and as the sale in the course of export is not entitled to the exemption from payment of purchase tax under Section 6 of Karnataka Sales Tax Act, the decision

of the High Court regarding the sales in question as being sales in the State and, therefore, immune from levy of purchase tax, cannot be sustained.

From the aforesaid discussion, it follows that by virtue of Section 5(3) of the Central Sales Tax Act, the sale effected by the respondent to Kalbhavi has to be regarded to be in the course of export by virtue of which fish oil was exported to a place outside the State and since this despatch was not pursuant to an intra-state sale or as a result of sale in the course of inter-state trade or commerce, the said sale falls directly within the ambit of Section 6 of the Act. Accordingly, the Sales Tax authorities were justified in levying purchase tax on the respondent and the High Court erred in coming to a contrary view.

For the aforesaid reasons, this appeal allowed. The order of the High Court is set-aside and the decision of the assessing authority is restored. There shall be no order as to costs.