(1986) 1 KarLJ 3

Karnataka Appellate Tribunal

Case No: STA 310/82 and STA 311/82

M/s. Canara Printing and Publishing House (P) Ltd.	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision: Nov. 20, 1984

Acts Referred:

- Karnataka Sales Tax Act, 1957 - Section 20

Citation: (1986) 1 KarLJ 3

Hon'ble Judges: K. M. Shetty, J; M. G. RajuM., J

Judgement

M.G. Raju, M.-These two appeals filed by the same appellant against the respondent against the orders passed in Appeals No. CST/ AP/26 dt. 27/81-82 dated 15-3-1982 dismissing the appeals of the appellant on the ground that the same were barred by limitation.

2. The common facts in both the appeals are M/s. Canara Printing and Publishing House (P) Ltd. Mangalore was purchasing machineries and as they were authorised to make purchase of issue of "C" forms for use in the manufacturing or processing of goods for sale. But the above goods were used exclusively for job work after purchasing the same. The goods manufactured with the above machinery have not been sold by the appellants. Thus after purchasing the goods for purchases specified in Section 8(3) and 9-B of the Central Sales Tax Act, 1956 (for short CST Act) the dealer has failed without reasonable excuse to make use of the goods for such purposes and they have thereby contravened the provisions of CST Act 1956 and committed an offence punishable under Section 10(d) of the CST Act.

Thereupon the assessing authority levied penalty under Section 10-A of the CST Act at Rs. 21,500/- and 32,000/- respectively for the above years. These assessing orders were passed on 30-3-1977 and 3-1-1977 respectively.

3. Meanwhile, the High Court of Karnataka had decided the cases under Section 8(3)(b), 10(d) and 10-A of the CST Act by its judgment dated December 13, 1973 by Their Lordship Chief Justice, G.K. Govinda Bhat and Justice M.K. Srinivasa Iyengar in the case of S.S. Umadi v. State of Mysore and others reported in 34 STC 228, wherein Their Lordship have held:

"Where the assessee, a registered dealer under the Central Sales Tax Act, 1956 purchased colours and chemicals for the manufacture or processing of goods for sale on the basis of C forms but used those goods for the purpose of dyeing yarn brought by the customers: Held, that the expression "goods for sale" in Section 8(3)(b) connotes that the goods so processed must belong to the assessee, as othersise he could not be said to have the right to sell them and that the assessee, by using the colours and chemicals for dyeing the yarn of others, had consumed the goods and not used them in the manufacture or processing of goods for sale. The assessee had, therefore, contravened the declaration given by him and had committed on offence u/s. 10(d) for which he was liable to penalty under Section 10A."

Therefore on the date of the above assessment orders the principle as laid down by the above decision was in force and, therefore the appellant did not file any appeal or revision before the higher authorities concluded the decision with respect to the dispute in these assessment orders. Subsequently the Hon"ble Supreme Court in the case of Assessing Authority-cum-Excise and Taxation Officer, Gurgaon, and another v East India Cotton Mfg. Co. Ltd., reported in 48 STC 239 dated July 23rd 1981 Their Lordship Mr. Justice P.N. Bhagwati, A.P. Sen and E.S. Venkataramiah have laid down a principle with respect to the same subject matter under Section 8(1) (b) (3) (b) (4) (a), 10. 10A of the CST Rules, 1957, Rules 12, 13, Form "C" of Rules 1957 reversing the principle as laid down by the Hon"ble High Court of Karnataka in the above decision in 34 STC 228 as follows:

"The respondent-company a registered dealer under the Central Sales Tax Act, 1956, as well as the Punjab General Sales Tax Act, 1948 carried on the business of manufacturing and processing textiles at Faridabad. It purchased goods in the course of inter-State trade on the basis of its certificate of registration and furnished to the selling dealers declarations in form C stating that these goods were purchased for use by the dealer in the manufacture of goods for sale. On the strength of this declaration the selling dealers were taxed at a concessional rate under Section 8(1)(b) of the Central Act. The goods purchased were used by the respondent partly for sizing, bleaching and dyeing of its own textiles and partly for sizing, bleaching and dyeing of textiles belonging to third parties on job-basis. The Excise and Taxation Officer issued notices for the imposition of penalty on the respondent on the ground that it had used the goods purchased partly in manufacturing its own goods for sale and partly for doing job-work for other parties and that the job-work did not constitute "Sale" and therefore the respondent had contravened section 10 of the Act. A writ petition filed by the respondent to have the notices quashed was dismissed by a single Judge of the High Court but allowed by a Division Bench. On appeal by the Assessing authorities to the Supreme Court:

Held, affirming the decision of the Division Bench of the High Court, that Section 8(3)(b) would clearly cover a case where a registered dealer manufactured or processed goods for a third party on a job-or contract and used in the manufacture or processing of such goods, materials purchased by him against his certificate of registration and the declarations in form C, so long as the manufactured or processed goods were intended for sale by such third party. The expression used by the legislature as well as the rule-making authority was simply "for use.....in the manufacture.....of goods for sale" without any addition of words indicating that the sale must be by any particular individual. The legislature had designedly abstained from using any words of limitation indicating that the sale should be by the registered dealer manufacturing the goods. Where the legislature wanted to restrict the sale to one by the registered dealer himself the legislature used the qualifying words "by him" after the words "for sale" in one part of Section 8(3)(b) but enacting another part of section 8(3)(b) the legislature did not qualify the words "for sale" by adding the words "by him". The deliberate omission clearly indicated that the legislature did not intend that the sale of the manufactured goods should be restricted to the registered dealer manufacturing the goods. The word "use" was followed by the words "by him" clearly indicating that the use of the goods purchased in the manufacture of goods for sale must be by the registeres dealer himself but the words "by him" were significantly absent after the words "for sale."

4. Thereafter the appellant in view of the reversed clarifed position of law under which, according to him, the respondent has collected penalty illegally and claiming refund of the were filed these two appeals before the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore with applications under Section 5 of the Indian limitation Act supported by an affidavit praying to condone the delay on the ground of the earlier decision of the Karnataka High Court and the clarified reversed decision of the Supreme Court and claiming the same as a sufficient cause to condone the delay. The learned Deputy Commissioner after hearing the arguments without going into the merits of the cases solely considering the ground of limitation and not accepting the cause put-forth by the appellant dismissed both the appeals by the impugned order against which the present two appeals have been filed.

5. Heard the Counsel for the appellant Sri P.V. Aithala, and the State Representative.

6. Now the point for consideration is whether under the changed circumstances in view of the decision reported in 34 STC 22B and the decision of the Supreme Court in 48 STC 239 whether the appellant can file these two appeals and maintain the same and whether the changed circumstances in the law or enunciation of the same by the Supreme Court reversing the earlier decided law by the High Court is sufficient cause for condonation of delay? Admittedly the assessment orders were passed on 30-3-1971 and 3-1-1977 respectively and the present appeals have been filed on 29-10-1981 after service of the assessment orders on 6-4-1977 and 7-1-1977 respectively which is beyond the period of limitation to the extent of 1638 days and 1726 days. Therefore whether the present ground urged by the learned Counsel for the appellant is sufficient cause for condoning

the delay. For this the learned Counsel for the appellant draws the attention of the Court to the case of assessing authority-cum-Excise and Taxation Officer, Gurgaon and another v East India Cotton Manufacturing Co. Ltd., reported in 48 STC, 239 delivered by Their lordship of the Supreme Court and reported in Sales Tax Cases Journal. The learned Counsel for the appellant submits that after the report of the above decision of the Supreme Court the Advocate of called the appellant''s attention to this judgment on 27-10-1981 and immediately the appellant preferred the appeals before the Deputy Commissioner of Commercial Taxes, Mangalore on 29-10-1981 and, therefore prays to condone the delay in filing the said appeals. The learned Deputy Commissioner relying on the decision reported in AIR 1972, 203 and of Madras High Court in Andal Sweet Stalls and Tiffin Dining Hall v State of Tamilnadu reported in 48, STC 551 has dismissed the appeals not condoning the delay in filing her. The Madras decision relied on by the Deputy Commissioner is definitely not applicable to the facts of the present appeals. In 48 STC 551 Their Lordship of the Madras High Court, M.M. Ismail, C.J. and Sethuraman held as:

"A judgment pronounced by a Court long after the expiry of the period of limitation could not be taken advantage of for filing an appeal with a petition to excuse the delay in filing the appeal."

7. Admittedly the decision reported in 16 STC 613 has not been brought to the notice of the Madras High Court when this judgment was delivered. When there is a decided principle as laid down by the Supreme Court the same has to be followed by the High Courts. But unfortunately eventhough the decision in 16 STC 613 was delivered by the Supreme Court on April 23rd, 1965 the same has not been brought to the notice of the Madras High Court. Therefore let us see whether the principle as laid down in 16 STC 613 is applicable to the facts of the present case which has also been discussed by the Andhra Pradesh High Court in 57 STC 179 which was delivered by Their Lordship of the Andhra Pradesh High Court on July 27, 1984 which is a latest decision on the point. The principle laid down in this decision is that:

"the appellant could have either appealed or applied for revision and prayed for condonation of delay on the ground that the mistake which was responsible for the recovery of the tax illegally levied was discovered when the judgment was pronounced by the Supreme Court in the BENGAL IMMUNITY case and such a plea would have been competent under section 22-B of the Act."

Further in the last para of the judgment in the above decision they have stated as:

"The Act under which tax was recovered from the appellant is valid and so is the charging Section valid; the appropriate authorities dealt with the matter in regard to the taxability of the impugned transactions in accordance with the provisions of the Act and in consequence, tax in question was recovered on the basis that the said transactions were taxable under the Act. The appellant contends that the transaction were outsaid sales and

they did not and could not fall under the charging section because of Article 226, and it argues that the tax was levied because both the appellant and the appropriate authority committed a mistake of fact as well as law in dealing with the question. Assuming that such a mistake was committed the conclusion that the transactions in question fell within the purview of the charging section cannot be said to be without jurisdiction or a nullity and claim the protection of Sec. 20. If after discovering the mistake, the appellant had moved the apprepriate authorities under the relevant provisions of the Act, its claim for refund would have been considered on the merits."

8. Thus it is clear that the Supreme Court has definitely held in the above decision that after the discovery of the mistake by the decision of the Supreme Court as to the law that was understood by the appellant and the assessing authority basing on the decision of our own High Court reported in 34 STC 228 the present appellant could have definitely appealed to the appellate authority with an application to condone the delay in filing the appeals. Further in the above said decision at page 633 it has been held:

"It is significant that though Section 21(1) prescribes a period of sixty days for appeal and Section 22 prescribes a period of four months for revision under Section 22B the prescribed authority is given power to extend the period of limitation if it is satisfied that the party applying for such extension had sufficient cause for not preferring the appeal or making the application within such period. Section 23A provides for rectification of mistake. It is thus clear that the appellant could have either appealed or applied for revision and prayed for condonation of delay on the ground that the mistake which was responsible for the recovery of the tax illegally levied, was discovered on the 6th September, 1956 because such a plea would have been perfectly competent under Section 22-B."

9. In the above decision for refund of the amount the appellant had filed a suit before the Civil Court which was dismissed on the ground that the Civil Court had no jurisdiction to entertain such a suit as the same was barred under the provisions of Bombay Sales Tax Act, 1946. Their Lordship of the Supreme Court while up-holding the contention of the Department that the Civil Court had no jurisdiction to entertain such a suit have laid down the above principle as to the sufficient cause for condonation of delay in view of the changed circumstances by discovering the mistake by the decision of the Supreme Court which we feel has to be applied to the facts of the present case and we feel the appeals filed by the appellants ought to have been entertained by condoning the delay in filing them.

10 The next and important decision is as we stated aboved, 37 STC 179. The facts of the above decision are directly in the same line as that of the present appeals. In the above decision the High Court of Andhra Pradesh held:

"The assessee, dealers in puffed and parched rice, were assessed under the Andhra Pradesh General Sales Tax Act, 1957 subjecting the turnover relating to puffed and

parched rice to tax at 4 percent u/s. 5(1) of the Act. No appeals were preferred by the assessees against the order of assessment within the prescribed period in view of the judgment of the High Court Works Again v Government of Andhra Pradesh (1977) 39 STC 521 holding that puffed and parched rice were not the same commodity as rice and therefore were liable to be taxed as "general goods" under section 5(1). The Supreme Court reversed the High Court"s decision in Alladi Venkateswarulu v Government of Andhra Pradesh (1975) 41 STC 394 (83) who it was only after the Supreme Court"s decision that the assessee preferred appeals before the Assistant Commissioner accompanied by petitions for condoning the delay in filing the appeals. The Assistant Commissioner refused to condone the delay and dismissed the appeals as barred by limitation. The Tribunal in second appeal condoned the delay in holding that the assessees were justified in not filing the appeals soon after receiving the assessment orders in view of the High Court"s judgment, that when the Supreme Court reversed the judgment of the High Court and the assessee came to know of the Supreme Court Judgment and filed appeals within a few months, there was sufficient cause for the assessees not to file appeals within the prescribed time.

11. Thus the facts of the above decision are directly applicable to the present facts of the case which have already stated while referring to the decision is 34 STC 229 and 48 STC 239. Following the decision of the Supreme Court in Kamals Mills Ltd., v. State of Bombay 16 STC 613 the Andhra Pradesh High Court held in the 57 STC 179:

"that one of the remedies open to the assessees was to prefer as appeal or revision, as the case may be, along with the petition for condoning the delay, on the ground that in view of the position of law obtaining on the date of receipt of the impugned order they decided not to file an appeal, but that since the subsequent decision of the Supreme Court established that assumption to be incorrect and further that the tax had been illegally collected from them, they were subsequently preferring the appeal and that that should constitute "sufficient cause" within the meaning of the provision to sub-section (1) of Section 19, or subsection (2) of Section 21 or the proviso to sub-section (1) of Sec. 22 of the Act, as the case may be. Further in view of Article 265 of the Constitution a subsequent decision of the High Court or Supreme Court, which changed the position, interpretation or the understanding of law, constituted a sufficient cause for condoning delay in filing the appeal or revision, as the case may be where it was established that on the date of receipt of the impugned order, the filing of an appeal or revision would be an empty formality, having regard to the position of law then obtaining. That would be so, whether the assessee raised the dispute before the authority, or paid the tax under a mutual mistake. Therefore the Tribunal was right in holding that the assessees had sufficient cause for not filing the appeals within the time prescribed, and in holding that the delay ought to have been condoned."

12. Thus the Andhra Pradesh High Court following the decision of the Supreme Court has definitely held as above that under the circumstances the cause shown by the appellants in that decision were held as sufficient cause for condoning the delay in filing the appeals.

Since the facts of the said decision being identical with the facts of the present appeals we feel following the decision of the Supreme Court in 16 STC 613 which has been followed by the Andhra Pradesh High Court in 57 STC 179 have come to the conclusion that the delay in filing the appeals by the appellant have to be condoned. The conclusion arrived at by the learned Deputy Commissioner of Commercial Taxes (Appeals), Mangalore in not condoning the delay is apparently not a genuine one and without following the principles as laid down in 16 STC 613 we can safely say the delay in filing the appeal be condoned and entertained the appeal since the said cause shown by them have been held to be sufficient in 16 STC 613 and the latest decision in 57 STC 179. Therefore the appeals filed by the appellant are liable to be allowed by setting the orders of the learned Deputy Commissioner of Commercial Taxes (Appeals Mangalore in Appeal Nos. CST/ AP-26 & 27/81-82 and the cases have to be remanded back to the Deputy Commissioner with a direction to entertain the same by condoning the delay and dispose of the same in accordance in with law.

13. In the result, both the appeals are allowed. The orders of the learnad Deputy Commissioner of Commercial Taxes (Appeals), Mangalore dated 15-3-1982 in Appeal Nos. CST/AP-26 & 27/ 81-82 are hereby set aside and the cases are remanded back to the Deputy Commissioner of Commercial Taxes (Appeals), Mangalore to entertain the same by condoning the delay, and to dispose of the same on merits in accordance with law.

14. A copy of this judgment ordered to be kept in STA. 311/88.