

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
SUNAGAR BROS.

DATE OF JUDGMENT 13/04/1993

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1993 SCR (3) 81 1993 SCC (3) 16
JT 1993 (3) 186 1993 SCALE (2) 558

ACT:
Karnataka Sales Tax Act, 1957: Ss. 20 (3) and 6B-Held,
undisputed tax to be deposited before appeal is entertained
includes additional tax under S. 6B.

HEADNOTE:

The respondent-assessee challenged the best judgment assessment for the year 1972-73. The First Appellate Authority dismissed it at its limine on the ground that the respondent had failed to pay the tax "not disputed in appeal".

A second appeal was dismissed by the Karnataka Appellate Tribunal. The High Court allowed the revision petition of the assessee on the ground that the additional tax payable under S. 6B was distinct from the tax in S. 20 (3) on the payment of which the right of appeal is made dependent.

In the appeal by the State to this Court the question was whether the mandate under S. 20(3) to pay the undisputed tax before the appeal is entertained is also applicable to additional tax payable under S. 6B of the Act.

Allowing the appeal, this Court,

HELD: 1. The expression 'tax' has been defined to mean a tax leviable under the provisions of the Act and as such includes the additional tax levied under section 6B of the Act. When Section 20 (3) talks of "payment of the tax and penalty not disputed in the appeal" it obviously includes the additional tax. (85-B)

On the plain language of S. 20 (3), the only conclusion which can be drawn is that the undisputed 'tax' which includes additional tax has to be deposited before the appeal is entertained. (85-C)

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2. The fact that the quantum in of the additional tax is determined with reference to the sales tax, purchase tax imposts would not alter its character. The additional tax is nothing but an enhancement in the rate of the sales tax/purchase tax under the Act. As soon as the assessing authority determines the levy of sales tax/purchase tax the additional tax under Section 6B becomes a part of the assessment order. Similarly if the main impost under Section 5 (1) is successfully challenged, the reasoning sustaining the challenge would also ipso facto affect the validity (if the additional impost under Section 6B of the

Act. (85-D-E)

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 228 (NT) of 1987.

From the Judgment and Order dated 8.4.1982 of the Karnataka High Court in S.T.R.P.No. 100/81.

M. Veerappa and K.H. Nobin Singh for the Appellant.

The judgment of the Court was delivered by

KULDIPSINGH, J. The question for consideration in this appeal is whether the mandate, under Section 20 (3) of the Karnataka Sales Tax Act, 1957 (the Act), to pay the undisputed tax before the appeal is entertained, is also applicable to the additional tax payable under Section 6B of the Act. In other words whether it is obligatory under the Act to deposit the tax and the additional tax before the appeal is entertained.

The respondent-assessee challenged the best judgment assessment made against him for the year 1972-73 before the First Appellate Authority which was dismissed in limine on the ground that the respondent failed to pay the tax "not disputed in appeal". The second appeal filed by the assessee before the Karnataka Appellate Tribunal was also dismissed. On a revision petition under the Act the Karnataka High Court reversed the findings of the authorities below on the ground that unpaid "not disputed" tax was the additional tax which was different than the tax envisaged under Section 20 (3) of the Act. The High Court allowed the revision petition of the assessee and remanded

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the matter to the appellate authority to dispose of the appeal in accordance with law. This appeal by way of special leave against the judgment of the High Court is by the State of Karnataka.

Before the appellate authority it was the admitted case of the parties that no part of the undisputed tax levied under Section 5 (1) of the Act had remained unpaid. It was only the undisputed additional levy under Section 6B of the Act which had not been paid.

Section 20 (1) of the Act confers a right of appeal. Sub-section 2 of Section 20 refers to the period of limitation. Sub-Section 3 (A) of section 20 is as under:-

"No appeal against an order of assessment shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of the payment of the tax and penalty not disputed in the appeal."

The High court on the interpretation of various provisions of the Act came to the conclusion that the additional tax under Section 6B is a levy distinct from the impost under section 5 (1) of the Act. The High Court thus came to the conclusion that the nonpayment of the additional tax would not bar the entertainment of the appeal under the Act. The findings of the High Court are based on the following reasoning:-

"Though the tax under section 6B is and impost of a similar nature, it is a levy distinct from the impost under Section 5(1) or under Section 6. This is the clear outcome of the scheme of Section 6B and the effect of Section 6B(2) of the Act. Section 6B(2) by providing for the application of the provisions of the 'Act' to the tax under Section 6B as they

apply to the sales or purchase tax under the Act, recognises the distinction between the additional tax on the one hand and the other imposts under the 'Act' on the other..... Section 20(1) creates and confers a right of appeal. Sub-Section (3) of Section 20 seeks to restrict that right and subject it to certain conditions. It appears us

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that the "tax" in Section 20 (3) on the payment of which the right of appeal is mad

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dependent should receive a construction which would advance that right and one which would not make that right dependent upon or subject to payment of a "tax" which is distinct from the tax constituting the subject matter of the appeal..... In the present case, the appeal is one directed against the main impost and no part of the assessment relating to the additional tax, is the subject matter of the appeal. That being so, the view that non-payment of the additional tax would bar the entertainment of the appeal is not unjustified."

We are not inclined to agree with the view taken by the High Court, Section 6B of the Act as it stood at the relevant time reads as under:-

"6-B. Levy of additional tax. -(1) There shall be levied and collected from every dealer liable to pay tax under section 5 or under section 6 (and from every dealer liable to pay tax under Section 25 B) an additional tax at the rate of ten paise in the rupee on the sales tax or purchase tax or both payable by such dealer;

Provided that in respect of the sale or purchase of any of the declared goods mentioned in the Fourth Schedule, the tax together with the additional tax shall not exceed four percent of the sale or purchase price thereof.

(2)The provisions of this Act and the rules made thereunder including those relating to refund or exemption from tax shall, so far as may be, apply in relation to the levy, assessment and collection of the additional sales tax or purchase tax or both, as they apply in relation to the levy assessment and collection of sales tax or purchase tax under this Act."

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It is obvious that the additional tax is leviable at the rate of ten paise in the rupee on the sales tax or purchase tax or both, payable by such dealer. The additional tax is computed with reference to the tax payable by the dealer. When once the assessing authority determines the sales tax or purchase tax under the Act the additional tax is levied automatically and becomes part and parcel of the assessment order. The expression "tax" has been defined to mean a tax leviable under the provisions of the Act and as such includes the additional tax levied under section 6B of the Act. When Section 20(3) talks of "payment of the tax and penalty not disputed in the appeal" it obviously includes

the additional tax. On the plain language of Section 20(3) of the Act it is not possible to make any distinction between the tax and the addition tax and the only conclusion which can be drawn is that the undisputed "tax" which includes additional tax has to be deposited before the appeal is entertained.

The fact that the quantum of the additional tax is determined with reference to the sales tax/purchase tax impost would not alter its character. The additional tax is nothing but an enhancement in the rate of the sales tax/purchase tax under the Act. As soon as the assessing authority determines the levy of sales tax/purchase tax the additional tax under Section 6B become part of the assessment order. Similarly if the main impost under Section 5 (1) is successfully challenged, the reasoning sustaining the challenge would also-*ipso facto*-affect the validity of the additional impost under Section 6B of the Act.

We are, therefore, of the view that the High court was not justified in holding that additional tax under Section 6B was not a tax for the purposes of Section 20 (3) of the Act. We allow the appeal, set aside the judgment of the High court and dismiss the revision petition filed by the assessee before the High Court. No costs.

U.R.

Appeal allowed.

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