(1967) 10 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No''s. 1380 and 1381 of 1965

Abdul Shakur Umar Sahigara and Co.	APPELLANT
Vs	
Commercial Tax Officer, Additional Circle, Mangalore and Others	RESPONDENT

Date of Decision : 31-10-1967

Acts Referred:
Sales Tax Act, 1957 — Section 13, 3 A

Citation : (1968) 1 MysLJ 249 : (1968) 21 STC 77

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : K. Shivashankar Bhat, for the Appellant; G.V. Shantharaju for the High Court Special Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—The petitioner is a registered dealer under the Mysore Sales Tax Act, 1957. In respect of the assessment year 1959-60, the Commercial Tax Officer, South Kanara, made an assessment of his turnover on 9th April, 1964, and issued a notice in Form No. VI calling upon the petitioner to pay the sales tax within twenty-one days. The tax demanded was Rs. 63,530.34.

2. The petitioner made an application on 22nd April, 1964, for permission to pay it in twelve monthly instalments, but before any order was made on that application, the Commercial Tax Officer made an assessment for the year 1960-61, and demanded the payment of a sum of Rs. 86,207.82 as the tax payable by the petitioner. The time fixed for payment was again 21 days. The petitioner made another application on 27th April, 1964, for permission to pay in twelve monthly instalments even with respect to the tax so determined.

3. On 30th June, 1964, the petitioner made a modified request. He offered to pay the entire sales tax due from him in monthly instalments by 30th March, 1965.

4. All these applications for instalments were presented to the Commissioner of

Commercial Taxes who forwarded them to Government. On July 2/3, 1964, Government made an order directing the Commercial Tax Officer to allow the petitioner to pay the arrears of tax in six instalments along with the "usual penalty". That order was communicated to the petitioner and the Commercial Tax Officer by the Commissioner of Commercial Taxes on 8th July, 1964.

5. On 31st July, 1964, the petitioner applied for the deletion of the direction which related to penalty in the order made by Government. Thereupon that order made by the Government was modified on 15th August, 1964. The Commissioner of Commercial Taxes was informed by Government that the petitioner might be allowed to pay tax in instalments and that the question of penalty "may be considered afterwards."

6. It is undisputed that the petitioner paid entire arrears of tax within the time allowed by Government. After the instalments were fully paid in time in that way, the petitioner was called upon by the Commercial Tax Officer on 5th May, 1965, to pay a penalty of Rs. 1,990.73 in respect of the assessment year 1959-60, and a sum of Rs. 4,586.03 in respect of the assessment year 1960-61. This penalty was payable, according to the Commercial Tax Officer, by reason of the default in the payment of the sale tax determined during the period preceding the first Government order to which we have referred.

7. In these two writ petitions in which this demand for the payment of penalty is called in question, Mr. Shivashankar Bhat appearing for the dealer, has placed before us at least four submissions.

8. The first was that once instalments were granted by Government by their order made on July 2/3, 1964, as modified by the later order made on 15th August, 1964, the sales tax became due only on the dates when the instalments had to be paid, and since those instalments were paid in time, there was no default.

9. The second was that since by the second order made by Government, Government reserved the power to examine the question whether penalty should or should not be paid by the petitioner, the Commercial Tax Officer was divested of the power to demand penalty until Government made an adjudication on that question.

10. The third was that section 13, which evenly operated on dissimilarly situated dealers, was unconstitutional.

11. The fourth was that the prescription of Form VI, which provided for twenty-one days for the payment of tax in all cases and which, therefore, deprived the Commercial Tax Officer of his discretion to grant time for payment of tax according to the circumstances of the case, was invalid.

12. Since these two writ petitions can be disposed of on the first submission, it is not necessary to consider the remaining three.

13. Mr. Shantharaju, appearing for the Government, did not dispute that section 3A of the Sales Tax Act read with section 13 confided power to Government to allow payment of tax in instalments, and that obedience to such direction was imperative. The position, therefore, was that, although the Commercial Tax Officer directed the petitioner to pay the tax within twenty-one days from the dates of his notices, the period of time within which the petitioner could pay the tax without committing default, was that fixed by Government by their order made on July 2/3, 1964. In consequence the notice of the Commercial Tax Officer stood superseded by the order made by Government, and instead of the tax becoming due on the expiry of twenty-one days specified in the notice, it became due when the instalments allowed by Government became due.

14. u/s 13 of the Sales Tax Act, a dealer becomes a defaulter when he neglects to make payment of the tax when it becomes due. Since the date on which the tax had to be paid by the petitioner was shifted from the date fixed by the Commercial Tax Officer to the dates of the instalments allowed by Government, the petitioner would have become a defaulter only if there was non-payment of any one of those instalments when they became due, and on such default, the penalty became payable by him u/s 13 with respect to the amount in respect of which payment was not made. In that view of the matter, although the period of twenty-one days specified in the notice issued by the Commercial Tax Officer had expired before Government made their order on July 2/3, 1964, the grant of instalments by Government effaced the default emanating from non-compliance with the Commercial Tax Officer''s demand and extended the time for payment. It is only when the payment by instalments allowed by Government was not made, that a default would come into being.

15. We do not accede to the argument of Mr. Shantharaju that the condition imposed by Government by their first order that the "usual penalty" shall be paid, did not stand deleted when Government made their second order on 15th August, 1964. That order which expressly stated that the question of penalty might be considered later, means that the direction for the payment of penalty, subject to which instalments were allowed by Government by their first order, disappeared, and in its place, the petitioner was allowed to pay the tax in instalments without being subjected to any specific condition.

16. When Government allowed instalments, they extended time for payment. Such extension clearly negatives the concept of any default, and so, the Commercial Tax Officer could not demand any penalty u/s 13 of the Sales Tax Act. Since the petitioner paid all the instalments as and when they became due after those instalments were allowed by Government, it was impossible for the Commercial Tax Officer to proceed on the hypothesis that there was any default in the payment of tax, since there was none.

17. On this short ground, we allow these writ petitions and set aside the impugned demands. The penalty, if it is already paid, shall be refunded to the petitioner.

18. The petitioner will be entitled to his costs in these two writ petitions. Advocate''s fee Rs. 100, one set.

19. Petitions allowed.

