

(1991) 10 KAR CK 0026
In the Karnataka High Court
Case No : Writ Appeal No. 134 of 1990

Assistant Commercial Tax Officer (Intelligence)

APPELLANT

Vs

N.N. Jariwala

RESPONDENT

Date of Decision : 21-10-1991

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 10, 10 A (4), 12 B (1), 29 (1) (a), 29 (2) (d)

Citation : (1991) ILR (Kar) 4414

Hon'ble Judges : M. Rama Jois, Acting C.J.;B.N. Krishnan, J

Bench : Division Bench

Judgement

M. Rama Jois, Ag. C.J.

1. This writ appeal is presented by the appellant against the judgment of the learned Judge allowing the writ petition holding that the compounding fee that could be collected from the 2nd respondent was only Rs. 1,000 and not Rs. 2,000 and, therefore, the appellant should refund the balance of the amount.

2. The brief facts of the case are these : The respondent is carrying on the business of purchasing and selling silk fabrics. His business premises was inspected by the Assistant Commercial Tax Officer, Intelligence, on August 5, 1987. After verifying the stock of art silk and pure silk fabrics the officer was of the view that the respondent had committed an offence punishable u/s 29(1)(a) of the Karnataka Sales Tax Act (for short "the Act") and a notice to that effect was issued on September 26, 1987 (annexure "B"). Subsequently having regard to the objections raised by the respondent, a notice dated November 7, 1987, u/s 29(2)(d) of the Act was issued.

It reads : "NO. ACTO/INT/LR/AB/INS/4/87-88 Office of the Assistant Commercial Tax Officer, (Intelligence), LR, South Zone, Bangalore. Dated. 7-11-1987. Revised show cause notice u/s 29(2)(d) of the KST Act, 1957. 1. Take notice that your place of business was inspected by the undersigned on August 5, 1987, along with other colleague officers. At the time of inspection, it

was noticed that silk fabrics physical stock was lying in your business premises. You have not produced regular books of accounts for verification.

2. Pursuant to the verification with assistance of Sri Narendra Kumar, husband of the proprietrix of the said business concern, it is noticed that the stock book, ledger and other regular books of accounts, i.e., day book, ledger, purchase vouchers, invoices, sales bill, etc. not maintained and produced for verification. In the absence of the regular books of accounts, the purchases of silk fabrics and art silk fabrics stock valued at Rs. 1,48,800 and Rs. 12,000, respectively, held in the business premises without relevant purchase invoices/vouchers. So the suppression of the purchases are totalling to a sum of Rs. 1,60,800.

3. The sales turnover of silk fabrics and art silk fabrics arrived by adding gross profit at 10 per cent on purchases, i.e., Rs. 14,800 and Rs. 1,200, respectively. So the suppression of sales turnover of silk fabrics and art silk fabrics to a sum of Rs. 1,63,800 and Rs. 13,200, respectively. The total suppression of sales of silk fabrics and art silk fabrics is arrived at Rs. 1,76,800. The tax liability on sale of silk fabrics at 4 per cent is at Rs. 6,547.20.

In addition to the above suppression the following irregularities were noticed, which amounts to contravention of section 26 of the Karnataka Sales Tax Act, 1957, read with rule 26 of the Karnataka Sales Tax Rules, 1957.

(a) Books of accounts not maintained.

As explained above, you have wilfully acted in contravention of the provisions of the Karnataka Sales Tax Act, 1957 and is punishable u/s 29(2)(d) of the Karnataka Sales Tax Act, 1957. So, I propose to file a charge sheet in the jurisdictional Judicial Magistrate for the above offence committed by you. However, before doing so, you are hereby given an opportunity to appear before the undersigned and compound the offence departmentally u/s 31 of the Karnataka Sales Tax Act, 1957. If you are so desirous, you are hereby required to pay the taxes in a sum of Rs. 6,547 and express your willingness in writing to compound the offence departmentally within seven days from the date of receipt of this notion Failing which action as proposed will be initiated without further notice.

Sd. A. BALLAPPA Assistant Commercial Tax Officer, (Int.), LR, South Zone, Bangalore."

Thereafter the offence was compounded for a sum of Rs. 2,000. Questioning the legality of the said levy, the respondent presented the writ petition. The contention of the respondent in the writ petition was, that as the case comes u/s 31(b) of the Act, the maximum compounding fee that could have been levied was Rs. 1,000 and therefore the levy of compounding fee at Rs. 2,000 was contrary to law. The said contention of the respondent was accepted by the learned Judge and the writ petition was allowed. Aggrieved by the said order, the appellant has presented this appeal.

3. Sri H. L. Dattu, learned counsel for the appellant, urged the following two contentions :

(1) The view taken by the learned Judge that the maximum compounding fee that could be collected in a case like this was Rs. 1,000 was erroneous;

(2) In any event, as the respondent was not entitled to prefer an appeal, after having voluntarily agreed for the compounding of the offence, he was estopped from presenting the writ petition also.

4. In order to appreciate the contentions it is necessary to set out the provisions of sections 29 and 31 of the Karnataka Sales Tax Act.

29. Offences and penalties. - (1) Any person who -

(a) fails to submit a return as required by the provisions of this Act, or the rules made thereunder; or

(b)

(bb) dishonestly objects to or fails to comply with the terms of a notice issued to him under sub-section (1) of section 14; or

(c) (omitted by Act 7 of 1966)

(d) fails to pay within the time allowed any tax assessed on him or any penalty levied on him under this Act; or

(e) fails to keep true and complete accounts;

(f) being a dealer or a miller whether he is a dealer or not fails to comply with a notice issued under sub-section (1) of section 28;

(g) fails to submit a statement as required by sub-section (1) of section 12-B;

(h)

shall on conviction by a magistrate, not below the rank of a Second Class Magistrate, be liable to a fine which shall not be less than two hundred and fifty rupees but which may extend to five hundred rupees.

(2) Any person who -

(a) wilfully submits an untrue return, or not being already an assessee under this Act, fails to submit a return as provided by the provisions of this Act or the rules made thereunder; or

(aa) carries on business as a dealer without furnishing the security demanded under sub-section (4) of section 10-A; or

(aaa) wilfully submits an untrue statement under sub-section (1) of section 12-B;

(aaaa) being a person obliged to register himself u/s 10 does not get himself registered; or

(b) prevents or obstructs inspection, entry, search or seizure by an officer empowered under this Act; or

(bb) prevents or obstructs inspection of any vehicle or boat or goods transported otherwise or seizure of goods by an officer-in-charge of a checkpost or barrier or any officer empowered under this Act; or

(bbb) tampers with any seal put under clause (iii) of sub-section (2) of section 28; or

(c) fraudulently evades the payment of any tax or other amount payable by him under this Act; or

(cc) collects any amount by way of tax or purporting to be by way of tax in contravention of sub-section (1) or sub-section (2) of section 18; or

(ccc) collects any amount by way of turnover tax or purporting to be by way of turnover tax in contravention of sub-section (3) of section 18; or

(d) wilfully acts in contravention of any of the provisions of this Act or the rules made thereunder,

shall on conviction, in addition to the recovery of any tax or other amount that may be due from him, be punishable with simple imprisonment which may extend to twelve months or with a fine which shall not be less than one thousand rupees but which may extend to five thousand rupees or with both; and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of the continuance of the offence."

"31. Composition of offences. - The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence punishable under this Act, by way of composition of such offence -

(a) where the offence committed is under clause (d) of sub-section (1) of section 29 or clause (c) of sub-section (2) of section 29, in addition to the tax or amount not paid or evaded to be paid, a sum of money not exceeding one thousand rupees or double the amount of the tax or amount so remaining unpaid or evaded to be paid whichever is greater, and

(b) in other cases, a sum of money not exceeding one thousand rupees."

The various types of offences that might be committed by the individuals are set out in clauses (a) to (g) of section 29(1) and also in clauses (a) to (d) of section 29(2). Section 31 of the Act provides for composition of offences. Clause (a) thereof provides that where the offence committed is under clause (d) of sub-section (1) of section 29 or clause (c) of sub-section (2) of section 29, in addition to the tax or amount not paid or evaded to be paid, a sum of money not exceeding one thousand rupees or double the amount of tax or amount so remaining unpaid or evaded to be paid whichever is greater, could constitute the basis for compounding the offence. According to clause (b) in the case of all

other offences the maximum amount of compounding fee that could be collected is Rs. 1,000.

5. If in the present case the offence committed by the respondent was either u/s 29(1)(d) or 29(2)(c), the contention urged by the learned Government Advocate would have been unexceptionable. In such cases the compounding fee might exceed Rs. 1,000 and it may be any amount depending upon the amount of tax evaded. In other words the amount of compounding fee could be double the amount of tax evaded. But in respect of other offences the legislature has fixed the maximum compounding fee of Rs. 1,000. It should also be pointed out that in order to attract clauses 29(1)(d) and 29(2)(c), an assessment order should have been passed against the dealer concerned and if in spite of passing the assessment order he had failed to pay the amount fraudulently or otherwise or had evaded the payment of tax as the case may be. In such a case the maximum amount of Rs. 1,000 fixed u/s 31(b) would not be applicable. As stated earlier, the notice issued to the respondent by the appellant was specifically u/s 29(2)(d) of the Act. Therefore, this case clearly falls u/s 31(b) of the Act and, therefore, the maximum compounding fee that could be collected from the respondent was Rs. 1,000. Therefore, we respectfully agree with the view of the learned Judge on this aspect of the matter.

6. The next question for consideration is, whether the respondent was estopped from presenting the writ petition on the ground of acquiescence. If the amount of compounding fee demanded and accepted by the respondent was within the maximum prescribed u/s 31 of the Act, there would have been considerable force in the contention of the appellant that the dealer concerned having agreed for compounding of the offences on payment of the amount within the maximum limit prescribed by law and having avoided prosecution, cannot subsequently turn round and challenge that the compounding fee collected was excessive. But in our opinion that consideration will not apply to a case where either on account of misconstruction of the provisions of the Act or for any other reason the competent authority had demanded an amount which is beyond the maximum prescribed by the Act and on account of ignorance or for any other reasons the dealer concerned had agreed to pay and/or paid the said amount to avoid prosecution. In such a case the dealer concerned would have the right to contend that the amount demanded was not authorised by law and therefore just because the dealer had accepted to pay the amount and have the offence compounded, he cannot be precluded from challenging the action of the authorities on the ground that the collection of compounding fee beyond the maximum prescribed under the Act was illegal. That is exactly the position in this case, in that the maximum amount that could have been collected as compounding fee was Rs. 1,000 and as double that amount has been collected, the respondent had the right to challenge the legality of the levy.

7. In the result, we make the following order :

The writ appeal is dismissed.

Writ appeal dismissed.