(1978) 01 KAR CK 0027

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 44 of 1974

B. Narasimha Bhandary and Sons APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 04-01-1978

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 B (1), 12 B (2)

Citation : (1978) 7 CTR 111 : (1978) 41 STC 282

Hon'ble Judges : M.N. Venkatachaliah, J;E.S. Venkataramiah, J

Bench : Division Bench

Advocate : P. Vasudeva Aithala, for the Appellant; H.N. Narayana, High Court Government Pleader, for the Respondent

Judgement

Venkataramiah, J.—The question which arises for consideration in this petition is whether the levy of penalty u/s 12-B(2) of the Karnataka Sales Tax Act, 1957 (hereinafter called the "Act"), against the petitioner made by the Commercial Tax Officer is in order. At the conclusion of the assessment in respect of the turnover of the assessee for the assessment year 1972-73, it was noticed by the Commercial Tax Officer that the petitioner had committed default in payment of the advance tax payable u/s 12-B(1) of the Act in not paying the same every months within the prescribed time. He, therefore, issued a notice to the petitioner calling upon him to show cause as to why action should not be taken u/s 12-B(2) of the Act. In the said notice the Commercial Tax Officer set out in detail the amount of tax which the petitioner had to pay in each month from April, 1972, to March, 1973, as per the returns filed by him and the dates of actual payment of the said amounts. The petitioner, while not disputing that there was a delay in the payment of the tax due u/s 12-B(1) within the prescribed time, pleaded that he was not able to pay the same within the prescribed time as the tea market had "collapsed" during the relevant period and its customers had not paid the amounts due from them in time. The Commercial Tax Officer was not satisfied with the explanation given by the petitioner. He, therefore, levied a penalty of Rs. 1,500 u/s 12-B(2) of the Act as against the maximum penalty of about Rs. 20,000 which could have been levied u/s 12-B(2) of the Act. Aggrieved by the order of the Commercial Tax Officer, the petitioner filed an appeal before the Deputy Commissioner of Commercial Taxes (Appeals), Mangalore. The said appeal was dismissed. The further appeal filed before the Karnataka Sales Tax Appellate Tribunal, Bangalore, was also dismissed. Hence this revision petition.

2. It is not disputed that there was a delay in payment of a tax u/s 12-B(1) of the Act during the months is question and that in each case there was a delay of about 5 or 6 months. It has also to be mentioned here that the Deputy Commissioner and the Tribunal also rejected the explanation given by the petitioner for the delayed payment. Hence the only question which arises for our consideration is whether penalty is leviable at all u/s 12-B(2) in a case where an assessee files a return u/s 12-B(1), but does not pay any amount by way of advance tax along with it, even though as per law he had to pay the advance tax. It is argued on behalf of the petitioner that, when no amount is paid by way of tax along with the return as required by section 12-B(1), no penalty is payable u/s 12-B(2) of the Act, as it would not be a case of short payment but would be a case of non-payment. There is no substance in the above contention. u/s 12-B(1) subject to such rules as may be prescribed, every dealer has to send every months to the assessing authority a statement containing such particulars as may be prescribed including taxable turnover of the preceding month and has to pay in advance the full amount of tax payable by him on the basis of his actual taxable turnover of the preceding month. Under the rules such tax has to be paid within 25 days after the close of the months to which such statement relates (see rule 17 of the Karnataka Sales Tax Rules). Sub-section (2) of section 12-B of the Act provides that if at the end of the year it is found that the amount of tax paid in advance by any dealer for any month was less than the tax payable for that month by more than fifteen per cent., the assessing authority may direct such dealer to pay, in addition to the tax, by way of penalty, a sum not exceeding one and a half times the amount of tax so paid falls short of the tax payable for the months. It is not disputed in this case that the petitioner had not paid the advance tax in time on any occasion as required u/s 12-B(1). It, therefore, follows that on every occasion when the amount fell short of the amount payable by above 15 per cent., section 12-B(1) was attracted.

3. The fact that section 12-B(2) requires the authority concerned to determine the penalty at the end of the year would not make any difference, because, that only prescribes the point of time at which penalty has to be determined, but does not exonerate an assessee who has not paid the tax payable u/s 12-B(1) in time, but who has paid it before the determination of the penalty, as u/s 12-B(2) the liability is incurred as soon as default is committed in making payment within the prescribed time every month and what remains to be done at the end of the year is only the determination of the actual amount of penalty to be paid.

4. We do not, therefore, find any merit in this petition. It is accordingly

dismissed, but without any order as to costs.

5. Petition dismissed.

