(1959) 12 KAR CK 0013

In the Karnataka High Court

Case No : Civil Petition No. 264 of 1959

C. Gokulchand APPELLANT

Vs

Assistant Commercial Tax Officer, Kolar Circle RESPONDENT

Date of Decision : 21-12-1959

Acts Referred:

Mysore Sales Tax Act, 1957 — Section 12 (2), 5 (8)

Citation : (1960) 11 STC 567

Hon'ble Judges : A.R. Somnath Iyer, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : G.S. Ullal, for the Appellant; D.M. Chandrasekhar, High Court Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—This civil petition is directed against the provisional assessment made by the Assistant Commercial Tax Officer, Kolar Second Sub-Circle, Kolar District, under the provisions of section 5(8) of the Mysore Sales Tax Act, 1957, for the year 1959-60. The assessee who is the petitioner before us was required by the Commercial Tax Officer to furnish an advance estimate of his turnover for that year, and the estimated turnover furnished by the assessee was Rs. 15,000. The assessee also declared a turnover of Rs. 18,000 for the year 1958-59. After taking into consideration these materials, the Commercial Tax Officer observed as follows :-

"Considering the situation of the shop, and the inspection made of the shop. I fix the daily sales at Rs. 75 and thus estimate the sales provisionally at Rs. 30,000 for 1959-60 and fix the provisional assessment as under :-

Gross turnover ... ... Rs. 30,000 Subject to tax u/s 5(1) ... Rs. 30,000 Tax payable at 2% ... ... Rs. 600 Total tax payable ... ... Rs. 600

2. This assessment was obviously made by the assessing authority under the provisions of rule 16(b) of the rules made under the Act. That rule reads :-

"16. (b) Where any return submitted by a dealer appears to the assessing authority to be incorrect of incomplete, the assessing authority shall, after giving the dealer a reasonable opportunity of proving the correctness or completeness of the return submitted by him, and after making such inquiry as it deems necessary, assess him to the best of its judgment."

3. While this is how rule 16(b) reads, section 5(8) of the Act which provides for a provisional assessment reads :-

"5. (8) The tax for each year may be assessed, levied and collected in advance during the year in monthly or quarterly instalments, and for that purpose a dealer may be required to furnish either an advance estimate of his turnover for the year, or periodical returns of the actual turnover as may be prescribed. The assessing authority may determine the amount of tax payable in respect of any period on the basis of the estimate or returns furnished by the dealer or on the basis of transactions of the dealer in the previous year, and on such assessment, the dealer shall pay the sum demanded within such time as may be fixed by such authority;"

4. Now, in this case, the assessing authority had before him the basis of the estimate furnished by the dealer, as also the basis of his transactions in the previous year. Although, as required by section 5(8), the assessing authority had to determine the tax payable on one of those bases, he discarded both those bases, and made a best judgment assessment under the provisions of rule 16(b). This, in our opinion, he was not competent to do. Section 5(8) of the Act, it is plain, directs the assessing authority to rest the determination of the tax either on the estimate furnished by the dealer or on his transactions in the previous year. He may select the one or the other for that purpose but cannot found the assessment on any other material.

5. The learned Government Pleader urged before us that the assessing authority was competent, as provided by rule 16(b), to himself estimate the turnover to the best of his judgment, although for that purpose he could take into consideration the estimate furnished by the dealer or his transactions in the previous year. The contention was that it was open to the assessing authority to reject the estimate furnished by the dealer and the material constituting the transactions in the previous year and make as estimate himself.

6. It is plain that section 5(8) of the Act does not bear that construction. That section only empowers the assessing authority to determine the tax as provided by it. It does not authorise him to make an estimate of the turnover himself. Rule 16(b) in so far as it empowers him to make such estimate, is clearly repugnant to section 5(8) of the Act and therefore invalid.

7. Our view receives support from the language of section 12(2) of the Act, under which the assessing authority has to make a final assessment. That sub-section reads :-

"12. (2) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof."

8. The words "on the basis" occurring in this section and in section 5(8) should, in our opinion, be given the same meaning. So construed, the only basis on which the tax may properly be determined u/s 5(8) can be either the estimate furnished by the dealer or that afforded by his transactions in the previous year and no other.

9. In the view that we take, the order made by the Assistant Commercial Tax Officer has to be and is set aside. The Assistant Commercial Tax Officer will however be at liberty to make a fresh provisional assessment in accordance with law.

10. There will be no order as to costs.

11. Petition allowed.