

(1970) 02 KAR CK 0003
In the Karnataka High Court
Case No : S.T.R.P. No's. 47 and 48 of 1969

Coelho Brothers

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 26-02-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Mysore Sales Tax Act, 1957 — Section 20 (3), 23 (1)

Citation : (1970) 1 MysLJ 445 : (1970) 25 STC 416

Hon'ble Judges : G.K. Govinda Bhat, J;B. Venkataswami, J

Bench : Division Bench

Advocate : P. Vasudev Aithal, for the Appellant; S.R. Rajasekhara Murthy, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, J.—These are two revision petitions u/s 23(1) of the Mysore Sales Tax Act, 1957 (hereinafter referred to as the "Act"), read with section 9 of the Central Sales Tax Act, 1956. The petitioner who is a dealer in tiles was assessed to tax under the Central Sales Tax Act, 1956, for the assessment years 1965-66 and 1966-67. The assessing authority levied tax at the penal rate of 10 per cent. since the petitioner did not produce the C Forms in respect of his sales. The petitioner paid the undisputed tax at 2 per cent. and then preferred appeals before the Deputy Commissioner of Commercial Taxes, Mangalore, questioning the levy of 10 per cent. Along with the appeals, he filed applications for stay of collection of the disputed tax amounts. In his appeal petitions, the petitioner stated that he was not given adequate opportunity to produce the relevant C Forms. He produced the said C Forms along with the appeal petitions. The Deputy Commissioner of Commercial Taxes by his orders dated 24th February, 1969, virtually rejected the applications for stay granting time to pay the disputed tax amounts on or before 12th March, 1969, failing which it was ordered that the appeals would be rejected without further notice. Against the said orders, the petitioner preferred two appeals before the Sales Tax Appellate Tribunal being S.T.A. Nos. 73 and 74 of 1969. The Tribunal being of the view that

the orders made by the Deputy Commissioner of Commercial Taxes were not appealable, dismissed the appeals. The Tribunal also expressed the view that the orders made by the Deputy Commissioner cannot be characterised as capricious or arbitrary. Against the said orders of the Tribunal, the petitioner has preferred the above revision petitions before this court.

2. Section 22 of the Act provides, inter alia, for an appeal to the Appellate Tribunal, against an order passed by the Deputy Commissioner u/s 20. The question is whether an order passed by the Deputy Commissioner refusing to entertain an appeal unless the disputed tax is paid is an order made u/s 20 of the Act appealable u/s 22. Section 20(3) reads :

"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 assessed and penalty, if any, due :

Provided that the authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against an order,

(a) without payment of the tax and penalty, if any, but on furnishing security to its satisfaction in such form and in such manner as may be prescribed; or

(b) on proof of payment of such smaller sum, with or without security, in the like manner, for such amount of the tax and penalty which remains unpaid, as it may direct."

3. The effect of the proviso to sub-section (3) of section 20 is that an appeal against the order of assessment will not be entertained unless the appeal is accompanied by satisfactory proof of the payment of the tax assessed, but the appellate authority is empowered to entertain the appeal for reasons to be recorded in writing without the payment of tax on furnishing security to its satisfaction. Apart from section 20(3) there is no separate provision for staying the assessment order or the collection of the disputed tax amount. When the Deputy Commissioner made the orders to the effect that the appeals will not be entertained unless the disputed tax amounts were paid before a particular date, he was purporting to exercise his powers under the proviso to sub-section (3) of section 20. Where the Deputy Commissioner rejects the request for entertaining the appeal without the payment of the tax amount, that is clearly an order made u/s 20(3) of the Act. The order of the Deputy Commissioner is in effect an order of rejection of the appeals for non-payment of tax along with the appeal petition and such an order is clearly appealable u/s 22.

4. On merits also the Tribunal was not right in its view that the Deputy Commissioner has not acted capriciously or arbitrarily. As stated earlier the petitioner disputed the levy of tax at the penal rate of 10 per cent. He paid the undisputed tax amount at 2 per cent. of the turnover. Tax at the penal rate of 10 per cent. is levied under the Central Sales Tax Act where a dealer does not produce the C Forms relating to his turnover. The petitioner's contention was

that he was not afforded a reasonable opportunity to produce the C Forms. This court has held in *Shirahatti v. Commercial Tax Officer, Haveri* [1967] 19 S.T.C. 306, that under certain circumstances, the assessee can be permitted to produce C Forms even in the appeal. The power conferred on the appellate authority under the proviso to sub-section (3) of section 20 is not an arbitrary power. The power to reject the appeal has to be exercised in a judicial manner. Where the appellant pays the undisputed tax amount and it appears from the appeal petition and the assessment order appealed against that there are substantial questions to be urged in the appeal and the appellant offers to furnish security to the satisfaction of the appellate authority, the appellate authority would be acting capriciously or arbitrarily, if it refuses to entertain the appeal without exercising its power under the proviso to sub-section (3) of section 20. In the instant case, it is clear that the petitioner has disputed only the penal rate of taxation and he has produced the C Forms along with the appeal petitions. His grievance was that the assessing authority had denied him reasonable opportunity to produce the C Forms. On the facts of the case, the Deputy Commissioner, in exercise of his power under the proviso to sub-section (3) of section 20, ought to have entertained the appeals on the appellant furnishing security to his satisfaction. In this court, we have ordered the stay of collection of tax on the petitioner furnishing security to the satisfaction of the assessing authority. Sri Aithal, the learned counsel for the petitioner, submitted that in compliance with this court's order, the petitioner has furnished security. The said security in our opinion is sufficient and we direct that it shall be treated as security furnished u/s 20(3). If the petitioner has not furnished the security, he should do so to the satisfaction of the Deputy Commissioner before the appeals are entertained.

5. In the result these revision petitions are allowed, the orders of the Deputy Commissioner and the Tribunal are set aside and we direct the Deputy Commissioner of Commercial Taxes to entertain the appeals preferred by the petitioner. No costs.

6. Petitions allowed.