

(1983) 07 KAR CK 0029
In the Karnataka High Court
Case No : S.T.R.P. No. 16 of 1983

Elestone Estates and Industries Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-07-1983

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 B (2), 13, 23 (1)

Citation : (1983) 54 STC 341

Hon'ble Judges : S.R. Rajasekhara Murthy, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : Sainath, for the Appellant; S. Rajendra Babu, Government Advocate, for the Respondent

Judgement

Jagannatha Shetty, J.—The petitioner-company is a dealer registered under the Karnataka Sales Tax Act. For the assessment year 1980-81, the company was required to submit monthly returns with payment of advance tax. But that was not faithfully followed. There was some delay in every month. The assessing officer by a notice dated 19th April, 1982, called upon the company to show cause why a sum of Rs. 22,346 should not be levied by way of penalty for default in payment of tax. The company wrote a letter dated 20th April, 1982, asking for time up to 10th May, 1982, for filing objections. The request was conceded but then there was no objection filed. So, the assessing officer confirmed the proposal by imposing the penalty of Rs. 22,346. Against the said order, the company appealed to the Deputy Commissioner, Commercial Taxes (Appeals), Bangalore City, contending that there was no judicial discretion exercised by the assessing officer in levying that penalty. That contention was not accepted and the appeal was dismissed. But, in the further appeal, the Karnataka Appellate Tribunal took a sympathetic view of the matter. After noticing that the company had suffered loss due to depression in tea industry, the Tribunal reduced the penalty by adopting the rate prescribed u/s 13 of the Sales Tax Act. In all, the Tribunal levied the penalty in a sum of Rs. 15,000.

2. Being not satisfied with the order of the Tribunal, the company has approached this Court with the revision petition u/s 23(1) of the Act.

3. It is not in dispute that the penalty was levied u/s 12-B(2) of the Act which is now numbered as 12-B(3). The section reads :

"12-B(2) If at the end of the year it is found that the amount of tax paid in advance by any dealer for any month, or for the whole year in the aggregate was less than the tax payable for that month or the tax for the whole year as finally assessed, as the case may be, 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 month or for the whole year, as the case may be :

Provided that no penalty under this sub-section shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition."

4. In *Narasimha Bhandary v. State of Karnataka* [1978] 41 STC 282 : (1978) 1 Kar LJ 159, it was held that even for default in payment of advance tax in every month section 12-B(3) is attracted. The primary question to be considered, therefore, is whether there was a proper discretion exercised by the assessing officer in levying the penalty in question. In *Manilal Monaji Somayya v. Commercial Tax Officer, Gokak* [1973] 32 STC 541 : (1973) 2 Mys LJ 365, a Bench of this Court of which one of us was a member has observed :

"The Act provides for imposition of penalty for failure to pay every month the advance tax on the dealer's taxable turnover during the preceding month. But the liability to pay penalty does not arise merely upon proof of default in payment of tax in advance every month. As observed by the Supreme Court in *Hindustan Steel Ltd. Vs. State of Orissa*, , and order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicial and on a consideration of all the relevant circumstances."

Under section 12-B(3) of the Act, the authority may levy penalty in a sum not exceeding one and a half times of the amount of tax so paid falls short of the tax payable for the month or for the whole year, as the case may be. It is not known on what basis the assessing authority has levied the penalty in a sum of Rs. 22,346. Neither the show cause notice issued to the company nor the order made thereon gives us any reasons for levying that penalty. The order of the first appellate authority also gives no guidance in this respect. The Tribunal, however, has calculated the penalty at the rate specified u/s 13 of the Act. But section 13

appears to be not applicable to levy of penalty u/s 12-B(3). Section 13 is attracted when there is delay in the payment of tax due and thereunder the defaulter shall be automatically liable to pay a penalty equal to one per cent of the amount of tax remaining unpaid for each month for the first three months, and 2 1/2 per cent of such amount for each month subsequent to the first three months. These rates cannot form the basis for imposing penalty u/s 12-B(3).

5. The power conferred u/s 12-B(3) is penal in nature. The authority should exercise the power judicially and on a consideration of all the relevant circumstances. In each case, the authority must first examine after a reasonable opportunity to the party whether there was good or sufficient cause for the default committed and if not, whether the party has acted in conscious disregard of its obligation and acted deliberately in defiance of law. If the party is guilty of such conduct, then the authority must examine the question as to the amount to be levied as penalty. Section 12-B(3) provides for the levy of maximum penalty. In the very nature of the power conferred, there cannot be any set formula to govern every case. Nor there could be any such formula to cover the defaults in different months of a single case. The power must be exercised reasonably depending upon the circumstances of each case.

6. The reason given by the Tribunal in this case was that in the relevant year, there was slump in the tea market and the company was, therefore, unable to pay punctually the advance tax payable. If that was the reason, there ought not to be penalty at all. That means, the company did not deliberately delay the payment of advance tax and it was not guilty of dishonest conduct or acted in conscious disregard of its obligation. The levy of penalty was, therefore unjustified and illegal.

7. We, therefore, allow the revision petition and set aside the order of all the authorities below.