

(1973) 07 KAR CK 0002
In the Karnataka High Court
Case No : S.T.R. Petition No. 24 of 1972

Gundappa

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 19-07-1973

Acts Referred:

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

Citation : (1974) 33 STC 375

Hon'ble Judges : Jagannatha Shetty, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; M.P. Chandrakantaraj Urs, High Court Government Pleader, for the Respondent

Judgement

Jagannatha Shetty, J.—The petitioner is an assessee under the Mysore Sales Tax Act, 1957. For the year 1967-68 he was assessed to tax in respect of the turnover relating to the sale of toddy by assessment order dated 10th September, 1969. The tax demanded was Rs. 2,511 out of which he paid Rs. 1,760. The balance due was Rs. 751.

2. The petitioner preferred an appeal before the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore. Along with the appeal he did not file proof of payment of the balance tax amount nor did he make an application for passing an order under the proviso to sub-section (3) of section 20 of the Act. The Deputy Commissioner posted that appeal for admission on 16th December, 1969, on which date the Advocate for the assessee filed an application for adjournment. Accordingly, the case was adjourned to 24th December, 1969, on which date neither the appellant nor his representative was present. Further, there was also no proof of the payment of the entire tax demanded. Consequently, the Deputy Commissioner rejected the appeal.

3. Against the said order, the assessee preferred a second appeal before the Mysore Sales Tax Appellate Tribunal which held that since the appellant did not produce proof of having paid the tax demanded of him, his appeal had been

rightly rejected by the Deputy Commissioner. Against the order of the Tribunal, this revision petition has been preferred u/s 23(1) of the Mysore sales Tax Act.

4. The first contention urged by Mr. Katageri, the learned counsel for the petitioner, was that it was the duty of the Deputy Commissioner to have made an order under the proviso to sub-section (3) of section 20 of the Act as it then stood. The provisions of the said proviso have to be invoked by the appellant if he wants to avail of the same. The appellant did not make any application before the Deputy Commissioner nor did he make any prayer in his appeal to that effect. The Deputy Commissioner was, therefore, right in rejecting the appeal of the appellant for non-compliance with the provisions of the section.

5. The next contention urged by the petitioner's counsel relates to the amendment of section 20(3) of the Act which came into force on 1st April, 1970. It can have no retrospective operation in respect of an appeal filed on 14th November, 1969.

6. The result is this revision petition fails and is dismissed, but no costs.

7. Petition dismissed.