

(1980) 07 KAR CK 0016

In the Karnataka High Court

Case No : S.T.A. No"s. 1, 2 and 3 of 1977

Haji S. Mohammed Ghouse

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 30-07-1980

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 B, 12 B, 12 B (2), 22 As, 24 (1)

Citation : (1982) 49 STC 154

Hon'ble Judges : M.K. Srinivasa Iyengar, J;M. Rama Jois, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; R.G. Devadhar, High Court Government Pleader, for the Respondent

Judgement

Rama Jois, J.—These are three connected sales tax appeals presented by a registered dealer u/s 24(1) of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the Act), against the order of suo motu revision made by the Commissioner of Commercial Taxes revising the order of the Deputy Commissioner of Commercial Taxes in appeal and confirming the penalty imposed by the assessing authority u/s 12-B of the Act.

2. The appellant is a dealer in cotton yarn waste, rags and chindies. During the three assessment years 1971-72, 1972-73 and 1973-74, the assessee filed monthly returns as required u/s 12-B(1) of the Act. He also paid tax calculated on the basis of the monthly returns for the three years at Rs. 350, Rs. 499 and Rs. 474 respectively. The assessee had not disclosed his turnover relating to cotton waste which constituted the bulk of his turnover. The assessing authority proposed to bring the turnover of cotton waste also to tax. The contention of the assessee was that cotton waste fell within the description of the word "cotton" and, therefore, was exempted as it was included in the Fourth Schedule to the Act. This contention of the assessee was rejected by the assessing authority in view of the amendment excluding cotton waste from the relevant entry relating to cotton and including it in the Second Schedule. The assessing authority

therefore brought the following turnover of cotton waste to tax :

"Year Sales turnover Tax liability 1971-72 Rs. 5,84,348.77 Rs. 35,060.94
1972-73 Rs. 6,59,443.26 Rs. 39,566.58 1973-74 Rs. 9,17,993.00 Rs. 55,079.58."

Then he proceeded to impose penalty in terms of section 12-B(2) of the Act. He levied a penalty of Rs. 5,000 for the year 1971-72, Rs. 7,000 for the year 1972-73 and Rs. 12,000 for the year 1973-74. Aggrieved by the said order, the appellant preferred appeals before the Deputy Commissioner of Commercial Taxes u/s 20 of the Act. By a common order dated 20th May, 1976, on the three appeals, the Deputy Commissioner reduced the penalty to Rs. 500 for 1971-72, Rs. 1,000 for 1972-73 and Rs. 1,500 for 1973-74. The appellate authority in reducing the penalty took into consideration the following points urged on behalf of the appellant :

- (1) The appellant had not collected any tax on the sales of cotton waste.
- (2) During the earlier years, the turnover of cotton waste was not liable to tax and it was by virtue of an amendment to the Act, the liability arose and the appellant was not aware of the said liability.
- (3) The appellant was purchasing cotton waste locally and also from other States and all of them were mixed up.
- (4) The appellant was in great financial difficulties as he was to pay huge compensation to the workers who were retrenched from service and goods had been sold on credit basis and the amount had not been realised the particulars of which were furnished before the appellate authority.

The appellate authority considered the above aspects and he was of the opinion that as the tax liability arose only on account of the amendment and as the appellant had not collected the tax the case required a lenient treatment. He also took note of the fact that the Commissioner himself had appreciated the financial difficulties of the appellant and had granted instalments for payment of tax in January, 1976. After considering the above aspects, he stated as follows :

"After having gone through the assessment records and from the list of debtors filed before me, I am convinced that there is no deliberate intention on the part of the appellant in not paying the taxes."

He was, therefore, of the opinion that the assessing authority had not exercised the discretion properly while levying penalty and that this was a fit case where reduction of penalty was called for. He accordingly reduced the penalty as indicated earlier.

3. The Commissioner of Commercial Taxes having entertained the view that the order of the appellate authority was prejudicial to the revenue, initiated suo motu proceedings u/s 22-A of the Act, proposing to revise the order of the Deputy Commissioner reducing the penalty. After giving notice and hearing the appellant, the Commissioner revised the order of the Deputy Commissioner and

restored the order made by the assessing authority.

4. Sri K. Srinivasan, the learned counsel for the appellant, contended that the appellate authority had given good reasons for reduction of the penalty and the discretion so exercised by the appellate authority could not be considered erroneous justifying interference u/s 22-A of the Act.

5. It is seen from the order of the Commissioner that while the fact that the appellant had not collected the tax was not disbelieved, he considered that the fact that the appellant had not collected the tax from his customers was not a relevant circumstance to be taken into account for reducing the penalty. In this behalf, the Commissioner failed to notice the relevant submission made on behalf of the appellant before the Deputy Commissioner that the liability arose on account of an amendment to the Act during the period in question and that as the appellant was not aware, he had not collected the tax and also did not include the turnover of cotton waste while filing the returns. The Deputy Commissioner had considered the said circumstances as relevant circumstances for reducing the penalty. This aspect has not at all been considered by the Commissioner. The Commissioner was of the view that the financial difficulties of the assessee which were also evidenced by the order of the Commissioner granting instalments should not have been taken into account in deciding the penalty. This is clearly untenable. Section 12-B of the Act provides that in cases where the difference between the tax paid by the assessee and the tax assessed by the assessing authority is more than 15 per cent in any given case, a penalty not exceeding one and half times the amount of tax so paid falls short or the tax payable for the month or for the whole year, as the case may be, could be imposed. Therefore, in imposing the penalty subject to the maximum prescribed u/s 12-B of the Act sound discretion has to be exercised taking all the circumstances and not excluding any serious financial difficulties of the dealer. As seen from the order of the appellate authority he had taken all the circumstances into consideration and found that there was substance in the reasons put forward by the assessee and on that basis took an objective view and reduced the penalty. The jurisdiction of the Deputy Commissioner as appellate authority u/s 20 of the Act in the matter of imposition of penalty u/s 12-B of the Act was co-extensive with that of the assessing authority and he acted within the jurisdiction and in exercise of sound discretion. Such an order cannot be characterised as erroneous justifying interference by the Commissioner u/s 22-A of the Act. For the reasons aforesaid, we make the following order :

(i) The appeals are allowed.

(ii) The order of the Commissioner of Commercial Taxes dated 14th December, 1976, is set aside and the common order of the Deputy Commissioner in appeals is restored.

6. Appeals allowed.