

(2005) 07 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No. 16557 of 2005

Industrial Credit and Development Syndicate Ltd.

APPELLANT

Vs

The Deputy Commissioner of Commercial Taxes and Others

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5 C
Karnataka Sales Tax Rules, 1957 — Rule 20A (1)

Citation : (2005) ILR (Kar) 3500 : (2007) 10 VST 381

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.G. Shivaram, for the Appellant; Niloufer Akbar, AGA for R-1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar J,

1. Petitioner, in this writ petition is a registered dealer under the provisions of the Karnataka Sales Tax Act, 1957, praying for issue of a writ in the nature of mandamus to direct the 1st respondent - the Deputy Commissioner of Commercial Taxes not to enforce any recovery proceedings as against the petitioner under demand notices at Annexure-C and D where under the petitioner was called upon to make good the total tax liability of Rs. 16,25,885/- for the assessment years 1987-1988 to 1993-94 and a sum of Rs. 12,76,111/- in respect of the assessment year 1995-96. Petitioner is seeking for issue of a restraint order on the 1st respondent on the premise that the petitioner has filed application in Form 6-A under Rule 20-A(1) of the Karnataka Sales Tax Rules, 1957, praying for extending the facility of installments in terms of its application dated 18.7.2003; that even during the consideration of such application the 1st respondent should not be permitted to enforce the tax liability etc. Petitioner has also sought for issue of a writ in the nature of mandamus to direct the 3rd respondent - State of Karnataka to dispose of the application of the petitioner

dated 18.7.2003 said to be pending before the State Government.

2. Submission of Sri. Shivaram, Learned Counsel for the petitioner is that the tax liability is one determined under the provisions of Section 5-C of the Act, a liability on the turnover of lease rentals; that the petitioner has questioned the constitutional validity of this provision; that the matter with regard to the challenge on the validity of the provision is still not concluded, it is still pending before a Division Bench of this Court in W.A. Nos. 5184 to 5193/2002; that the petitioner will be put to considerable hardship if he is called upon to discharge the tax liability in terms of the assessment order for the years cited above; that the petitioner himself had not collected any taxes from his customers and finds itself in a dire situation; that under similar circumstances, petitioner had approached this Court seeking for relief and this Court in terms of the order dated 6th August 2004, vide Annexure-E, passed in W.P. No. 31861/2004 had under similar circumstances issued directions to the authorities to dispose off the application and pending disposal had restrained the respondent from enforcing the demands; that similar directions should be issued in the present writ petition also.

3. Learned Counsel also submits that the application filed under Rule 20-A(1) of the Rules is required to be considered on the merits of the same; that the Supreme Court has ruled that a discretion vested in an authority should be exercised in a proper manner, that even when the concerned authority has not exercised such a discretion the authorities cannot be permitted to resort to such recovery proceedings and in support of this submission reliance has been placed on the decision of the Supreme Court in the case of State of Haryana Vs. M/s. Maruti Udyog Ltd. Ors., .

4. I do not find any bona fides at all even to entertain this writ petition. The liability is for the assessment year 1987-1988 dated 26-6-2003 and even in the application the assessee had sought for five equal yearly installments. It is almost two years are over and it is not the case of the assessee that any amount has been paid, obviously the application is only a ruse for postponing or avoiding the tax liability.

5. Be that as it may. An application under Rule 20-A is not a provision conferring a right on an assessee, but a matter of concession extended to an assessee within the discretion of the government for granting the facility of instalment payments. In a matter of concession a writ of mandamus does not lie. Assuming that the application is one required to be considered and orders passed, that will not in any way enable the assessee to claim the mandamus in the interregnum. The legal position even when an appeal is preferred against an assessment order the very filing of the appeal will not act as a circumstance to stay the recovery proceedings, it is a fortiori so, in the present case. The question of issuing a writ of prohibition to an authority under the Karnataka Sales Tax Act, 1957, not to enforce recovery proceedings does not arise in such circumstances and also as no public authority can be restrained from performing its function in accordance

with law.

6. Though Sri. Shivaram, Learned Counsel for the petitioner would seek to urge that the very tax liability is not just etc, it is not open to the petitioner to put forth such contention in a proceeding of this nature, particularly where the application itself was for payment of tax and not disputing the liability, but only for providing certain instalment facilities.

7. The order dated 6th August 2004 cited by the Learned Counsel is not one, which could be considered as a precedent wherein any legal issue is decided. On the other hand the order expressly indicated that the writ petition is disposed of with certain directions, in peculiar circumstance of the given case. Therefore, it does not mean that it becomes a precedent or a principle of law required to be followed in the subsequent case. In the present case, I do not find any bona fides at all on the part of the petitioner even to approach this Court.

8. So far as the decision of the Supreme Court in the case of State of Haryana v. Maruthi Udyog Ltd., and Ors. (supra) is concerned, a decision rendered in the context of the hardship that is pleaded by an assessee with regard to the requirement of compliance by the payment of the tax amount as a condition precedent to maintain the appeal. Situation is not the same here. The assessee only wanted to avail of a concessional facility. Concession is not a right as already observed. The decision of the Supreme Court in the case cited above is not applicable to the present facts and circumstances of the case. I do not find any justification or reason to entertain this writ petition particularly for issue of a writ of mandamus as prayed for. Accordingly, the writ petition is rejected.