(1981) 01 KAPT CK 0005

In the Karnataka Appellate Tribunal

Case No : STA 172/81

Jafer and Bros. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 07-01-1981

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 20(3)

Citation : (1981) 1 KarLJ 21

Hon'ble Judges : B. B. Naik, Member;S. R. Puranik, J

Judgement

B.B. Naik, M.-The appellant has filed this appeal against the stay order granted by the Assistant Commissioner of Commercial Taxes (Appeals), Dharwar Division, Dharwar under No. DR/KST/AP. 296/80-81 dated 29-12-80 in which he had directed the appellant to pay 50% by cash and 50% by way of bank guarantee out of the total tax payable at Rs. 4,500-00 for the year 1978-79 as assessed by the Asst. Commercial Tax Officer, Sub-Circle I, Gadag under his order dated 8-6-1980.

2. The facts of the case are that the Assistant Commercial Tax Officer, Sub. Circle I, Gadag had passed the order for the year 1978-79 exparte and had demanded the tax at Rs. 4,500-00 on the estimated turnover of Rs. 30,000 and the appellant had not declared any turnover. He had filed the appeal against the said order before the Assistant Commissioner of Commercial Taxes and also had given a petition for grant of stay of the recovery proceedings for an amount of Rs. 4,500-00. The first appellate authority had passed the order stating that the appellant should pay 50% of the amount by cash and the remaining 50% by way of bank guarantee on or before 7-1-1981 before the Assistant Commercial Tax Officer, Gadag. Against this order of the appellate authority, he has filed this appeal.

3. Sri P.R. Patil, the learned advocate on behalf of Sri B.V. Katageri, represented the case and contended that the assessing officer had fixed the tax at Rs. 4,500-00 exparte. He has disputed the entire tax liability. The first appellate

authority has granted the stay order with a condition that the appellant should pay 50% by way of cash and the remaining 50% by way of bank guarantee. But the same is not in accordance with the provisions laid down by the Mysore High Court in D.M. Moidin Kunhi v. State of Mysore, 27 STC 154. Hence it is a case of arbitrary exercise of discretion. He requests to set aside the stay order granted by the first appellate authority and issue the stay order for the entire amount by taking the bank guarantee only without insisting on the cash.

4. It is seen that the appellant has not at all produced the books of account before the assessing authority for the purpose of assessment and he has not filed the return of turnover and has not paid any tax. Therefore the first appellate authority is right in demanding 50% of the amount by way of cash by using his discretion. Further it is a small amount of Rs. 2,250-00 which has to be paid by cash and the equal amount by way of bank security. Even if he desires to furnish the bank guarantee he is required to deposit the equal amount in the bank in order to obtain the bank guarantee. Therefore it makes no difference to the appellant whether he deposits the cash in the Govt, treasury by way of tax or in the bank to obtain the bank guarantee. Therefore, the first appellate authority has used a sound discretion and judicious view is taken, taking into consideration that the appellant has not at all paid any amount along with the monthly statements or along with the final return. The case cited by the learned advocate 27 STC 154 is not applicable to this case, as in that case a huge amount of Rs. 65,000-00 was involved and the appellant had requested for furnishing property security instead of bank guarantee. But in this case the amount is very small and the appellant has not put forward any request in furnishing any property security as the amount is very small. Under such circumstances we do not find any valid reasons to interfere with the order passed by the first appellate authority.

5. In the result the appeal is dismissed.

