(2003) 12 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No. 50407 of 2003

Jayalakshmi Wine Land APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Citation : (2007) 7 VST 593

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Mohan Bhat, for the Appellant; Niloufer Akbar, High Court Government Pleader, for the Respondent

Judgement

R. Gururajan, J.—Petitioner is before me seeking for various prayers. Memo filed by the petitioner enclosing the original notice is taken on record.

2. Petitioner is a dealer in liquor. Petitioner''s premises was inspected on March 30, 1993 and it was found that the monthly tax which was required to be paid has not been deposited. Post dated cheques were collected from the petitioner. Assessment proceedings were concluded and a notice was issued to the petitioner in this regard. Thereafter, a penalty of Rs. 5,45,023 was levied on the petitioner. The same was challenged right up to this court by the petitioner. According to petition averments there was a scheme available with regard to waiver of penalty and interest in terms of the budget speech for the year 1999-2000 of the then honourable Deputy Chief Minister. In terms of the same, petitioner made an application. Petitioner refers to correspondence between him and the respondents in this regard. Ultimately, respondents issued annexure A denying benefits of the scheme to the petitioner. They also resorted to Section 14 proceedings against the petitioner. Petitioner with these facts is before me.

3. Heard the learned Counsel for the parties and perused the material on record.

4. Learned Counsel for the petitioner invites my attention to the material facts to contend that the scheme provides for waiver of penalty and interest on tax

relating to the assessment year up to 1996-97 by way of one-time relief. He, therefore, says that penalty also qualifies for relief in terms of the scheme. Learned Counsel says that rejection in terms of annexure A is unsustainable in law. Per contra, learned Government Pleader would say that in terms of the scheme there is no outstanding by the petitioner and therefore the respondents are justified in passing the impugned order.

5. Admittedly, annexure A has been passed by placing reliance on an order dated July 13, 1999. The said Government Order is made available to me. The said order does not in any way disentitle the petitioner, as held by the respondents. The order dated July 13, 1999 is only with regard to extension of time to pay off the arrears in terms of the scheme. The said Government Order is not applicable with regard to consideration of waiver of interest and penalty in terms of the proceedings of the Commissioner of Commercial Taxes.

6. Admittedly petitioner says that the petitioner has made over the entire tax. Waiver is sought only in respect of the penalty. Learned High Court Government Pleader argues that penalty is not "outstanding" in terms of the scheme. This question is no longer in dispute in view of the judgment of this court reported in A.J. Shetty and Co. (P) Ltd. Vs. The Commissioner of Commercial Taxes in Karnataka and Another, . In the said judgment this court has ruled that the word "outstanding" has to be understood as an amount payable in terms of the sales tax laws. Penalty and interest are relatable to the tax due and therefore it is certainly an "outstanding" in terms of the sales tax laws. This court further ruled as under :

The object of providing ''one time relief measure is to reduce litigations and to mop up the revenue locked up in disputes. It is seen that the Budget Speech itself has provided for waiver of penalty and interest on tax. A narrow interpretation would defeat the very object of the measure.

7. This judgment is clearly applicable to the facts of this case.

8. In these circumstances, this writ petition is allowed. Matter is remitted back for re-decision by the respondents. Respondents are directed to consider the case of the petitioner with regard to waiver of penalty and pass orders within four weeks from the date of receipt of a copy of this order. Admittedly petitioner has made over Rs. 2,50,000 in terms of the interim order granted by this court. On the peculiar facts of this case, I deem it proper to direct the respondents to retain the said amount till a final decision is taken in terms of this order. In the light of this order, annexure B, has to go and the same is set aside by this court.

9. Ordered accordingly. No costs. Ms. Niloufer Akbar, learned High Court Government Pleader is directed to file memo of appearance within four weeks.