(1968) 07 KAR CK 0014

In the Karnataka High Court

Case No : S.T.A. No''s. 83, 84 and 85 of 1968 and S.T.R.Ps. No''s. 33, 34 and 35 of 1968

K.M. Muniswamappa APPELLANT

Vs

State of Mysore RESPONDENT

Date of Decision : 29-07-1968

Acts Referred:
Mysore Sales Tax Act, 1957 — Section 20, 20 (5)
Mysore Sales Tax Rules, 1948 — Rule 30B

Citation : (1968) ILR (Kar) 855 : (1969) 1 MysLJ 523 : (1968) 22 STC 536

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; Shantaraju, for E.S. Venkataramaiah, Special Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—The turnover of Muniswamappa who is a dealer in Doddaballapur was assessed by the Commercial Tax Officer in respect of the assessment years 1958-59, 1959-60 and 1960-61 and he was called upon to pay the tax determined by those orders of assessment. Muniswamappa preferred appeals from those orders of assessment to the Deputy Commissioner u/s 20 of the Mysore Sales Tax Act and asked for a stay of the enforcement of the orders made by the Commercial Tax Officer. On those stay applications the Deputy Commissioner made an order on 19th February, 1968, calling upon the appellant to furnish a bank guarantee in respect of the sum of money due from him under the orders of assessment. Against this order, the petitioner preferred appeals to the Mysore Sales Tax Appellate Tribunal complaining against the insistence on the production of a bank guarantee. Those appeals were dismissed by the Tribunal on the ground that the Deputy Commissioner had the discretion to select the form of security to be furnished by the petitioner and also on the further ground that the petitioner''s Advocate consented to the production of the bank guarantee when the Deputy Commissioner made his order.

2. In these three revision petitions which are presented against the order made

by the Sales Tax Appellate Tribunal, Mr. Katageri appearing for the petitioner contends that the Deputy Commissioner had no competence to insist on the production of a bank guarantee. This argument is maintained on the ground that the insistence on the production of a bank guarantee is authorised only by rule 30-B of the Mysore Sales Tax Rules which was not in force when the petitioner produced his returns before the Commercial Tax Officer, and that the provisions of that rule, which came into force only on 20th November, 1962, had no application to proceedings which commenced with returns presented before it came into force.

3. In support of his submission Mr. Katageri asked attention to the proviso appearing u/s 20(5) of the Mysore Sales Tax Act, 1957, as it then stood. It reads :

"Provided that the appellate authority may, in its discretion give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed."

4. The "form" or "manner" to which this proviso refers had not been prescribed before rule 30-B came into force in November, 1962, and so, it was contended by Mr. Katageri that the Deputy Commissioner had no power to call upon the petitioner to produce security in the form of a bank guarantee, and that he should have accepted the security of his property which was worth a large sum of money.

5. We do not agree. Rule 30-B empowers the Deputy Commissioner to direct the appellant who asks for an order of stay in an appeal preferred to him, to furnish either personal security or property security or security in the form of a bank guarantee. This rule was in force when the petitioner filed his appeal before the Deputy Commissioner, and so, the non-existence of that rule at the time when the petitioner produced his returns before the Commercial Tax Officer has no materiality. The power under that rule was exercised by the Deputy Commissioner after it became available to him, and the enunciation made by the Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, , in which it was elucidated that the institution of a suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto, during the rest of the career of the suit, does not assist the argument now placed before us by Mr. Katageri.

6. The right to prefer an appeal was not to any extent impaired by rule 30-B, and even under the proviso to section 20(5) of the Act the Deputy Commissioner has the discretion to select the form of the security to be furnished by the petitioner. We are, therefore, of the opinion that the direction made by the Deputy Commissioner under rule 30-B was fully within his competence and so, we dismiss these revision petitions. No costs.

7. Petitions dismissed.

