

(1974) 08 KAR CK 0022
In the Karnataka High Court
Case No : S.T.R.P. No. 68 of 1973

Krishna Mohan and Co.

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 20-08-1974

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 (4), 12 A, 12 A (1A), 23 (1)

Citation : (1975) 35 STC 565

Hon'ble Judges : G.K. Govinda Bhat, C.J; M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; M.P. Chandrakantaraj Urs, Government Advocate, for the Respondent

Judgement

Govinda Bhat, C.J.—This revision petition preferred by the assessee u/s 23(1) of the Karnataka Sales Tax Act, 1957 (hereinafter called the Act), is directed against the order of the Sales Tax Appellate Tribunal, Bangalore, made on 20th September, 1972, in S.T.A. No. 259 of 1972.

2. The matter relates to the assessment year 1968-69. The assessee is an individual and on the return submitted by him an assessment order was made on 2nd August, 1969, on a taxable turnover of Rs. 4,28,540. Proceedings were initiated for bringing to assessment certain escaped turnover u/s 12-A of the Act in the course of which the Additional Commercial Tax Officer issued a notice dated 18th January, 1971, purporting to be one u/s 12(4) of the Act, to show cause as to why a penalty of Rs. 2,894.40 should not be levied for the concealment of a turnover of Rs. 1,28,640.00. To the said notice, the assessee filed his objections. The Commercial Tax Officer made an order of assessment u/s 12-A of the Act on 3rd February, 1971, by which he levied a penalty of Rs. 2,894.40. The assessee did not prefer any appeal against the order of reassessment, but preferred an appeal disputing his liability to pay the penalty. The Deputy Commissioner of Commercial Taxes allowed the appeal on two grounds, viz., that the penalty order has been passed after a lapse of more than

two years from the date of the original assessment order u/s 12(4) of the Act and that the penalty u/s 12(4) of the Act could be levied only at the time of making the assessment.

3. Aggrieved by the said order, the State preferred an appeal to the Sales Tax Appellate Tribunal which allowed the appeal holding that although the notice to show cause as to why penalty should not be levied mentioned that it was issued u/s 12(4) of the Act, it should be treated as one issued u/s 12-A(1-A) of the Act.

4. In this revision petition Sri B. V. Katageri, the learned counsel for the assessee submitted that the notice to show cause as to why penalty should not be levied cannot be considered as a valid notice u/s 12-A(1-A) of the Act.

5. In order to appreciate the contention urged by the learned counsel, it is necessary to set out the notice dated 18th January, 1971, which reads :

"Office of the Commercial Tax Officer, I Circle, Bangalore, Dated : 18th January, 1971.

Notice u/s 12(4) of the M.S.T. Act, 1957.

Take notice that you had filed the return in form 4 on 29th April, 1969, disclosing the gross and taxable turnovers at Rs. 4,31,434.86 and Rs. 4,01,761.44 respectively, for the year ending 31st March, 1969. On verification of commission sales as per your statement, the total sales on commission basis amounted to Rs. 5,01,070.26 as against Rs. 3,72,430.26. Thus, you had concealed a turnover of Rs. 1,28,640.00 being the sales of foodgrains on commission basis taxable at 1 1/2 per cent. involving a tax of Rs. 1,929.60. From this it could be inferred that you have suppressed the turnover of Rs. 1,28,640.00 under commission sales deliberately and wilfully to avoid payment of tax on such turnover. In the circumstances, I propose to levy penalty of Rs. 2,894.40 for the concealment of a turnover of Rs. 1,28,640.00 taxable at 1 1/2 per cent involving a tax of Rs. 1,929.60 as provided u/s 12(4) of the M.S.T. Act, 1957. Therefore, you are required to file your objections, if any, within seven days from the date of receipt of this notice, failing which, it will be presumed that you will have no objection and action will be taken as per the Rules.

Additional Commercial Tax Officer, I Circle, Bangalore."

6. Clause (1-A) of section 12-A of the Act reads thus :

"In making an assessment under sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under sub-section (1), a penalty not exceeding one-and-a-half times the tax so assessed :

Provided that no penalty under this sub-section shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition."

7. If a notice is issued under clause (1-A) of section 12-A of the Act affording a reasonable opportunity to the dealer for showing cause against the imposition of penalty, the notice must state that the assessing authority is satisfied that there has been an escapement of turnover from assessment due to wilful non-disclosure of assessable turnover by the dealer. All that the notice issued says is that the assessee has suppressed the turnover of Rs. 1,28,640 under commission sales deliberately and wilfully. The notice has proceeded as if it were a notice under sub-section (4) of section 12 issued in the proceedings for the original assessment. It has been held by this court that the order imposing penalty u/s 12(4) of the Act should form part of the assessment order. The same reasoning also applies to the case of imposition of penalty under clause (1-A) of section 12-A of the Act. The order imposing penalty should be made simultaneously with the assessment u/s 12-A. In the instant case, the notice dated 18th January, 1971, cannot be construed as a notice to show cause under clause (1-A) of section 12-A of the Act.

8. Mr. Chandrakantaraj Urs, Senior High Court Government Advocate, submitted that since the notice purporting to be u/s 12(4) of the Act was sent along with the notice u/s 12-A, the former notice has to be construed as one issued under clause (1-A) of section 12-A of the Act.

9. The proceedings are for the imposition of penalty. When penalty is sought to be imposed, the proceedings have to be strictly construed. When the notice issued purports to be u/s 12(4) of the Act and the dealer has got a valid defence in it, no penalty could be imposed on him u/s 12(4) after the original assessment order was made. The Deputy Commissioner of Commercial Taxes also construed the notice issued u/s 12(4) as not one under clause (1-A) of section 12-A of the Act. That benefit of doubt should go to the assessee and not to the State. It is not open to the State to contend that the notice should be construed as one issued under clause (1-A) of section 12-A of the Act.

10. Therefore, we allow this revision petition and reverse the order of the Tribunal and restore the order made by the Deputy Commissioner of Commercial Taxes. It is ordered accordingly. No costs.

11. Petition allowed.