(1981) 05 KAPT CK 0013

In the Karnataka Appellate Tribunal

Case No : STA 943/80

Lakshmi Auto Centre APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 08-05-1981

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 10(A)(4)

Citation : (1981) 1 KarLJ 93

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

Judgement

B.B. Naik, M.-The appellant has filed this appeal against the order of the Additional Deputy Commissioner of Commercial Taxes (Appeals), Bangalore City Division Bangalore passed in A.P. No. 108/80-81 dated 15-11-1980 dismissing the appeal.

2. The facts of the case are that the Commercial Tax Officer, XV Circle, Bangalore had passed an order under S. 10(A)(4) of the Karnataka Sales Tax Act, 1957 (hereinafter called as ''the Act'') on 30-7-1979 demanding a security deposit of Rs. 10,000 to ensure proper payment of the tax. He had filed an appeal against the said order which was dismissed.

3. Shri S. Narayana, the learned Chartered Accountant represented the case and argued that the Assessing Officer has arbitrarily demanded the security deposit of Rs. 10,000 without working out the security amount at the rate of one half of the tax anticipated to be payable for the year. He cites the decision in the case of Janakiram Mills Limited v. Dy. Commercial Tax Officer, 29 STC 522. He further contended that the Assessing Officer has not assigned any year to cover up this security deposit. The Assessing Officer has not issued any demand notice demanding the security deposit and it cannot be enforced without the demand notice. The Assessing Officer cannot demand the cash security as the circumstances of the case are not good and sufficient reasons to demand the security.

4. Shri Boregowda, the learned State Representative contended that the

Assessing Officer has got power to demand the security deposit under S. 10(A)(4) of the Act read with Rule 12(A) of the Karnataka Sales Tax Rules, 1957 (hereinafter called as ''the Rules''). The Assessing Officer has fixed the security deposit amount on the basis of the tax payable for the year 1978-79 which is about Rs. 30,000. The cash security was demanded as the appellant had not requested for any other alternative security. There are good and sufficient reasons for demanding the security as the appellant failed to pay the tax as per monthly statement in Form 3. He cites the decision of the Supreme Court in 12 STC 324 and contended that the order passed by the lower authorities are in accordance with law and pleads that the orders of the lower authorities should be confirmed.

5. The points for consideration are as follow:

i) Whether it is necessary to mention the period to which the security deposit is demanded?

ii) Whether it is necessary to issue demand notice in Form-5 or Form-6?

iii) Whether the amount fixed at Rs. 10,000 as security deposit is reasonable?

iv) Whether there are any reasonable causes to demand the security deposit?

6. Under S. 10(A)(4) of the Act the Assessing Officer can demand the security deposit from a dealer who is registered under the Act or who has applied for renewal of registration. But in this case the appellant is a registered dealer under the Act and the Assessing Officer can demand the security deposit from him. The security paid under this section in any year is maintainable in full until it is dispensed with by the Assessing Officer or until the registration certificate is cancelled. Therefore the amount of security deposit demanded does not relate to any particular year but it relates to the entire business of the registered dealer to the period up to which he continues to run the business. Therefore it is not necessary to mention the year to which the security deposit relates. Hence our answer to the first point is in the negative and the contention of the appellant is not accepted.

7. The demand notice in Form-5 or 6 will be issued only when the demand is created as per the provisions of Rule 17, 20, 37 and 38 of the Rules. But the security deposit is not demanded under the provisions of those Rules. Further under Rule 12(A) of the Rules, the Assessing Authority was empowered to direct the appellant in writing to furnish the security within such time as may be specified by him. Therefore the Assessing Officer can only direct the appellant to furnish a security as provided under R. 12(A) of the Rules. Therefore no demand notices are necessary to be issued to the appellant. Therefore this contention of the appellant also fails.

8. Under S. 12(A)(4) of the Act, the Assessing Authority can demand as security deposit an amount equivalent to one half of the tax anticipated to be payable by the dealer for that year. But in this case the appellant has filed the final return in

Form-4 on 1-8-1979 for the year 1-7-1978 to 30-6-1979 showing the gross turnover at Rs. 8,35,812-77 and taxable turnover at Rs. 2,21,878-30 relating to motor spare parts and tax payable is shown at Rs. 29,512-60. But the appellant had not paid the tax as per the monthly statement filed by him even though the Assessing Authority had issued the demand notice in Form-5. The Assessing Officer had also issued a show cause notice calling upon for objections why the security deposit of Rs. 10,000 should not be demanded under his notice dated 19-7-1979. But the appellant failed to file any objections. Further the amount fixed at Rs. 10,000 is far below the half the amount of tax payable which works out at Rs. 14,756-30. The Assessing Officer has demanded only Rs. 10,000. Therefore he has correctly calculated the amount of security deposit also. Therefore the contention of the learned counsel for the appellant is not accepted that it was not calculated on the basis of the tax etc.

9. Under S. 10(A)(4) the Assessing Authority was empowered to demand the security deposit for proper payment of tax payable by the appellant. In this case it is seen that the appellant is found to be regular defaulter and he has not paid monthly tax along with the monthly statement in Form-3 and he failed to credit the amount even though the demand notices in Form-5 were issued. To give an example, for the month of July, 1978 the tax payable is shown at Rs. 6048/- as per Form-3. But the appellant has paid at the rate of Rs. 2,000/- on three occasions on 1-12-1978, 14-12-1979 and 29-1-1979. The appellant has contended that he had not deliberately retained the amount as he had to receive huge amounts from the Government departments. But he has not made out the case as to how much amount was involved in the government departments and he has not said so before the lower authorities at any time. Further it is immaterial whether the amounts were due from government departments or private persons. The fact remains that the appellant has defaulted in payment of the taxes regularly. Therefore there are proper and reasonable causes to demand the security deposit. If the appellant had requested for furnishing any other kind of security the lower authorities would have considered his request. But he has not put forth his plea. There was no question to consider for furnishing of alternative security. The decision cited by the learned counsel in Janakiram Mills Limited v. Deputy Commercial Tax Officer, 29 STC 522, it was also observed that the appellant was not prevented to state his objections or his inconveniences for making cash deposit and offer an alternative security. In this case the appellant has not at all objected and has not demanded for furnishing any other security. In that case the Madras High Court has held that the security not exceeding half the tax payable should be demanded. But in that case the amount more than half the amount was demanded. But in the case on hand the Assessing Officer has demanded less than the half the amount of tax payable. Therefore we hold that the orders passed by the lower authorities are found to be in accordance with law and hence the appeal fails.

10. In the result the appeal is dismissed.