
(1992) 08 KAR CK 0018
In the Karnataka High Court
Case No : S.T.R.P. No's. 43 to 46 of 1989

M. Sadanand Rao

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-08-1992

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 (3), 17, 17 (4), 31

Citation : (1992) ILR (Kar) 3308

Hon'ble Judges : S.A. Hakeem, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : K.S. Ramabadrana, for the Appellant; H.L. Dattu, H.C.G.P., for the Respondent

Judgement

S.A. Hakeem, J.—Since all these revisions pertain to the same assessee and involve common questions of facts and law, they are heard and disposed of by this common order.

2. The petitioner is the proprietor of a hotel by name "Lakshmi Bhavan" at Hubli. He is an assessee under the Karnataka Sales Tax Act, 1957 ("the Act"). For the period 1982-83, the petitioner filed an application in form No. 8 seeking the benefit of composition u/s 17 of the Act. Subsequently the petitioner filed his return, declaring a total turnover of Rs. 97,752.45. The assessing authority having declined to accept the composition as prayed for by the petitioner issued a proposition notice and completed the assessment on the basis of best judgment. The composition amount payable on the gross turnover mentioned was Rs. 8,000 and as the business of the petitioner for tax purpose was only for two months, viz., February 2, 1983 to March 31, 1983 the total composition amount was determined at Rs. 1,334.

3. For the assessment period April 1, 1983 to March 31, 1984, the petitioner declared a gross turnover of Rs. 1,03,690.59 and claimed benefit of composition u/s 17 of the Act. The assessing authority refused to give the benefit thereof on the ground that the instalments of tax had not been paid by him. Ultimately the

authority concluded the assessment determining the total turnover of Rs. 2,62,700 on the basis of five times the expenditure of the establishment as found by the assessing authority. We do not find any error of jurisdiction to interfere with the same.

4. For the assessment period April 1, 1984 to March 31, 1985, the petitioner declared a total turnover of Rs. 1,33,686.76. For this year also the assessing authority rejected his claim for composition on the ground that on inspection on March 25, 1985, by the Assistant Commercial Tax Officer (Int.), certain suppressed sales had been discovered. Accordingly, a proposition notice was issued to the petitioner, to which the petitioner filed his reply pointing out that composition of tax and compounding of the alleged offence u/s 31 of the Act had been allowed since the assessee was not maintaining the accounts in due course of business. As such the question of reopening the same issue did not arise for the final assessment. However, the assessing authority rejected this contention and completed the assessment u/s 12(3) of the Act, inter alia, imposing a penalty of Rs. 10,000 for the alleged contravention. The assessee unsuccessfully challenged the order of assessment and penalty before the first appellate authority. On his further appeals, while scaling down the estimated turnover for each year, and reducing the penalty to some extent in respect of the assessment for the years 1982-83 and 1983-84, the Appellate Tribunal has by its common order rejected his appeals pertaining to the assessment period 1984-85.

5. In so far as the petitioner's grievance pertaining to the assessment for the years 1982-83 and 1983-84 is concerned, the Tribunal having taken into consideration the salary, feeding charges, establishment charges and other expenses, and in the absence of proper books of account multiplied the same by five times to determine the turnover and levied the tax accordingly. On the admitted and established facts it seems to us that the Tribunal has come to the right conclusion, and as a matter of fact given sufficient relief to the assessee, against which he cannot have any valid grievance.

6. In so far as the assessee's appeal pertaining to the assessment for the year 1984-85, the challenge is only against the cancellation of the composition granted u/s 17(4) of the Act. Sri K. S. Ramabadrana, learned counsel for the petitioner, has urged that in the facts and circumstances of the case, having accepted the compounding fee u/s 31 of the Act pertaining to the alleged contravention of the provisions of the Act the authorities below were not justified in cancelling the benefit of composition on the ground of the alleged suppression detected by the Assistant Commercial Tax Officer (Int.), upon inspection of the establishment on March 25, 1985.

7. On the contrary Sri Dattu, learned High Court Government Advocate, has urged that the authorities below were within their jurisdiction in cancelling the composition on the ground that there was contravention of the provision of the Act and the Rules within the purview of rule 8(2)(iv)(b) of the Rules.

8. The question that arises for consideration is whether it is open for the assessing authority to rely on the inspection report regarding the alleged contravention of the provisions of the Act after departmentally compounding it, for cancellation of composition u/s 17(4) of the Act. In order to appreciate the point it is appropriate to refer to section 31 which reads as under :

"31. Composition of offences. - The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence punishable under this Act, by way of composition of such offence"

(Remaining part of the section not relevant for the purpose)

9. A bare perusal of the section makes it clear that it contemplates two contingencies, namely, the probability of an offence having been committed, or certainty of the commission of the offence itself. In either of the situations a discretionary power is vested in the prescribed authority u/s 31 of the Act for permitting compounding. But such a discretion is definitely not available to the authority under rule 8(2)(iv)(b) of the rules. In view of this undisputed position emerging on the interpretation of section 31 of the Act, it becomes incumbent upon the authority under rule 8(2)(iv)(b) of the Rules to apply his mind to arrive at an independent finding that the assessee has contravened any provision of the Act or the Rules disentitling him to take the benefit of composition u/s 17(4) of the Act. In the instant case, it is very clear that the assessing authority as well as the appellate authority have solely relied upon the finding incorporated in the inspection report of the Assistant Commercial Tax Officer (Int.), dated March 25, 1985. That by itself, in our opinion, would not entitle the authority to invoke the provisions of rule 8(2)(iv)(b) of the Rules to cancel the composition permitted u/s 17(4) of the Act to the assessee.

As held by a Division Bench of the Madras High Court in *R. Sundaresa Iyer & Sons v. Board of Revenue* [1971] 28 STC 430

"The facts found in the compounding proceedings may not by themselves be material in the assessment proceedings. The assessing authority will have to rest the assessment in the light of the materials themselves which he will have to judge with a fresh mind."

10. In the view we have taken above, S.T.R.P. Nos. 43 and 44 of 1989 are dismissed. S.T.R.P. No. 45 of 1989 is allowed. The order of the authorities pertaining to the year 1984-85, in so far as it relates to withdrawal of the composition benefit (annexures "F" and "N"), is set aside.

S.T.R.P. No. 46 of 1989 which pertains to penalty is also rejected.

S.T.R.P. Nos. 43, 44 and 46 of 1989 dismissed.

S.T.R.P. No. 45 of 1989 allowed.