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(1990) 10 KAR CK 0057

In the Karnataka High Court

Case No : Sales Tax Revision Petitions No''s. 84 and 85 of 1990

Mak Wood Industries — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 22-10-1990

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 20 (2), 23

Citation : (1990) 3 KarLJ 551 : (1991) 83 STC 352

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;K.B. Navadgi, J

Bench : Division Bench

Advocate : B.P. Gandhi, for the Appellant; H.L. Dattu, Government Pleader, for the Respondent

Judgement

M.P. Chandrakantaraj Urs, J.—The short question which falls for determination in this sales tax revision petition u/s 23 of the Karnataka Sales Tax Act, 1957, is whether the first appellate authority was correct in dismissing the appeal as barred by limitation, the appeal being presented 206 days beyond the prescribed time without considering the explanation offered in regard to the delay that had occurred in presenting the appeal ?

2. Sub-section (2) of section 20 of the Act prescribes period of 30 days to prefer an appeal against the order of the Assistant Commercial Tax Officer or the Commercial Tax Officer as the case may be. The time in accordance with sub-sections (1) and (2) of section 20 of the Act will commence running against the assessee from the date on which the notice of assessment was served on the appellant or from the date on which he is served with a copy of the order against which he has to prefer an appeal. Proviso to sub-section (2) of section 20 empowers the appellate authority to admit the appeal if sufficient cause is shown for not preferring the appeal within the period prescribed. In other words, a discretionary power is conferred on the appellate authority to be exercised in accordance with judicial norms as proceedings are quasi judicial in character.

3. Mr. Gandhi presented to us a copy of the petition which he filed on January 1,

1988, the date on which he was required to appear before the first appellate authority according to the notice issued bearing the date January 4, 1988. But that application itself is not found in the records produced by the Government Pleader. But we do find a medical certificate dated December 20, 1987, to which a reference is made in the copy of the application produced by Mr. Gandhi, learned counsel for the petitioner. The copy bears the seal of the Deputy Commissioner (Appeals), Mysore and bears the date January 18, 1988. Therefore, we are satisfied that the appeal came to be disposed of without proper application of mind to the cause shown by the petitioner in regard to the delay in filing the appeal and in that view of the matter the order of the Tribunal which also overlooked this aspect is liable to be set along with the order of the first appellate authority and the matter remitted back to the Deputy Commissioner (Appeals), Mysore, to consider afresh the application filed on January 18, 1988. Only after considering this application, the Deputy Commissioner (Appeals), Mysore, is free to dispose of the appeal in accordance with law.

4. It is useful for us to observe that in furtherance of the proviso to sub-section (2) of section 20 of the Act no rules have been prescribed in regard to the procedure to be followed by the appellate authorities concerned in entertaining the appeals beyond the prescribed period. This lacuna should be made good by the State Government by framing appropriate rules prescribing that every appeal presented beyond the period prescribed must be accompanied by an application seeking condonation of delay on sufficient cause being shown enabling the appellate authority concerned to internee the appeal as is done in almost every other judicial proceeding based on the principles underlying section 5 of the Limitation Act. This is to avoid unnecessary hardship to the assessee as well as the department. Such an application supported by affidavit if so prescribed should accompany the memorandum of appeal itself.

5. A copy of this order shall be forwarded to the Finance Secretary, Government of Karnataka.

6. Mr. Gandhi requested for interim stay of the assessment order while the first appellate authority was considering the question of entertaining the appeal beyond the prescribed period of time. We decline to do so.

7. Order accordingly.

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