(1999) 07 KAR CK 0067

In the Karnataka High Court

Case No : Writ Petition No''s. 8580-81 of 1993 and 5867, 20296-97 and 16730 of 1999

Mazgaon Dock Ltd. APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:
Central Sales Tax Act, 1956 — Section 9 (2)
Income Tax Act, 1961 — Section 37
Karnataka Sales Tax Act, 1957 — Section 13, 13 (2), 13 (2) (ii)

Citation : (1999) 07 KAR CK 0067

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : Ganesh Shenoy and M.N. Shankare Gowda, Vasan Associates and S.V. Subramanyam, for the Appellant; S. Sujatha, High Court Government Pleader, for the Respondent

Judgement

V.K. Singhal, J.—The controversy in these matters is with regard to levy of interest u/s 9(2) of the Central Sales Tax Act with the aid of Section 13 of the Karnataka Sales Tax Act and connected matters. In India Carbon Ltd. etc. Vs. State of Assam, it was held by the apex Court that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax make a substantive provision in this behalf. This judgment was followed in V.V.S. Sugars v. Government of Andhra Pradesh [1999] 114 STC 47 (SC) and Commissioner, Trade Tax, U.P., Lucknow v. Ashoka Rice Mills [1999] 112 STC 566 (All.).

2. There is no dispute that the liability of interest is a substantive law and unless the statute under which the interest is levied specifically so authorises no interest can be levied. Section 13(2) of the Karnataka Sales Tax Act, 1957 uses the word levy of penalty for delayed payment of tax. This Court in Sha Ghelabhai Devji and Co. Vs. Assistant Commissioner of Commercial Taxes (Assessment), Dharwad and Another, interpreted Section 13 as under :

"17. Section 13 of the Act employs the term ''penalty'' and not ''interest'' as payable on taxes withheld or defaulted by an assessee under the Act. But, that by itself cannot be decisive in holding one way or the other. Every word takes its colour from the context in which it occurs. A word is not a crystal with a definite and unalterable meaning to be applied mechanically to all and every situations in one and the only way. The rationale for providing for payment of interest has also been explained by this Court referring to the principles expounded by Cooley in his classic treatise on Sterling Construction and Trading Co. and Another Vs. The Commercial Tax Officer, X Circle, Seshadripuram, Bangalore-21 and Another, . The Income Tax laws in India and United States of America also provide for the same [vide World Tax Series--Taxation in India by Harvard Law School, Chapter 13, paras 13/7.1 and 7.2 at pages 391 and 392 and Taxation in the United States published by Harvard Law School, Chapter 13, para 13/7.1 at page 1262]. The object is to deter a dilatory assessee, as the very petitioner, to make prompt payment of taxes found due to the State to meet the ever growing and almost insatiable demands and in default to make compensation for delayed payments. When one examines the same in that context, as that should be, applying the progressive rule of construction of statutes that has now come to stay, which has been very felicitously expressed by Lord Denning in Seaford Court Estates Limited v. Asher [1949] 2 All ER 155 at page 164 approved by our Supreme Court in State of Karnataka and Another Vs. Hansa Corporation, and K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and a Full Bench of this Court in C. Arunachalam Vs. Commissioner of Income Tax, Karnataka, Bangalore, , we are of the view that what is provided in Section 13(2) of the Act is only interest and not penalty."

A circular was issued by the Commissioner on May 23, 1998 in which it was instructed that all cases of delayed payment of deemed or assessed tax or any amount due under the Central Sales Tax Act, 1956 would attract penalty.

"The honourable Supreme Court has in para 12 of their judgment, specifically said that Section 9(2-A) makes no reference to interest. Whereas the Assam Sales Tax Act refers to levy and collection of interest and not penalty, on delayed payment of local sales tax.

The situation under the Karnataka Sales Tax Act, 1957 is that, Section 13(2)(ii) clearly prescribes levy of penalty on delayed payment of tax or any other amount due under the Act. Similarly, Section 12-B(2) also refers to levy and collection of penalty on belated payment of admitted tax on expiry of the prescribed period for filing of monthly returns."

3. The provisions of Section 13(2) of the Karnataka Sales Tax Act are as under :

"13(2) If default is made in making payment in accordance with Sub-section (1)--

(i) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax (or any other amount due) under this Act, and

(ii) the person or persons liable to pay the tax (or any other amount due) under this Act shall pay a penalty equal to--

(a) two per cent of the amount of tax or any other amount due remaining unpaid for each month for the first three months, after the expiry of the time prescribed Under Sub-section (1); and

(b) two and one-half per cent of such amount for each month subsequent to the first three months as aforesaid."

4. In Swadeshi Cotton Mills Co. Ltd. Vs. Commissioner of Income Tax, the question of damages paid for delayed payment of employees'' contributions to Provident Fund was considered. Beside that penalty of Rs. 7,667 levied under the Central Sales Tax Act was also claimed as business expenditure u/s 37 of the Income Tax Act, 1961. It was observed that the penalty was imposed not on account of any delayed payment of Central sales tax but was for contravention of the provisions of the Central Sales Tax Act. There is nothing on record to show that the amount of compensation had a compensatory element in it. No relief was given. In respect of damages it was considered that it was partly compensatory in nature and partly penal.

Similarly in Malwa Vanaspati and Chemical Co. Vs. Commissioner of Income Tax, penalty levied u/s 17(3) of the Madhya Pradesh General Sales Tax Act, 1958 for use of the raw material purchased at concessional rate for different purpose ; it was found that it comprises both the elements of compensation and penalty ; compensation in so far as payment of tax at the full rate is obligatory ; and something more, up to 25 per cent thereof as is determined by the Commissioner; to the latter extent the amount would partake of the character of penalty.

In K.G. Kallappa and Co. Vs. State of Karnataka, provisions of Section 65A of the APMC Act using the word penalty in the section were challenged. It was held by this Court that the section is compensatory in character, though the word "penalty" is used in the said provision it provides for collection of interest on the market fee withheld by a person after it becomes due.

In Govindji Punshi and Another Vs. The Tahsildar, Savanur, Savanur District, Dharwar and Another, it was held that the word "penalty" used in Section 13(2) of the Act is payable on default being made to pay tax due ; what is payable in reality is interest on the amount remaining unpaid at the rates specified therein.

The decision given in Patel Volkart (P.) Ltd. Vs. Commissioner of Commercial Taxes in Karnataka, Bangalore, was also referred wherein the decision of Sterling Construction & Trading Co. v. Commercial Tax Officer, X Circle, Seshadripuram, Bangalore reported in [1973] 32 STC 235 (Mys) was relied and even the decision given in the case of Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, was distinguished. In that case, the question as to whether the provisions of Section 13(2) of the Act contains the provision of penalty or interest was not examined. Since the liability is definite and automatic leaving no discretion to the authority for sufficient cause of default it was held that the appellate authority has no power to reduce or waive the amount payable u/s 13(2). In another decision given in the case of Sha Ghelabhai Devji and Co. Vs. Assistant Commissioner of Commercial Taxes (Assessment), Dharwad and Another, (referred to above) this Court came to the conclusion that the term penalty used in Section 13 is to be construed as interest and only a simple amendment of Section 13 of the Act by substituting the term "interest" to "penalty" was suggested.

5. In view of the various decisions, given by the division Bench of this Court, it has to be held that the nature of amount payable for default in making the payment of tax due is a fixed quantified sum for which the authorities have no discretion under the Act to reduce or enhance under the provisions of Section 13 and as such it has to be treated as interest. The liability to pay interest is a substantive charge and could be imposed for the default of the tax payable under the Karnataka Sales Tax Act, but in respect of dues under the Central Sales Tax Act such substantive liability cannot be fixed by invoking the provisions of Section 9(2)(a) in the absence of any substantive provision in Central Sales Tax Act as held by the apex Court in India Carbon Ltd. etc. Vs. State of Assam, .

Writ petitions stand disposed of with the above observations.

