(2004) 03 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No. 6452 of 2004

Premier Traders APPELLANT

Vs

A.C.C.T., Investigation 3 RESPONDENT

Date of Decision : 03-03-2004

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 B, 20, 28 (6)

Citation : (2004) 2 KCCR 175 SN : (2008) 11 VST 139

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.R. Narayan and Co, for the Appellant; Niloufer Akbar, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioner, a dealer under the provisions of the Karnataka Sales Tax Act, 1957 ("the Act", for short), has approached this Court questioning the legality of the order dated January 22, 2004 passed by the respondent u/s 28(6) of the Act for the period 2002-03.

2. Sri M.R. Narayan, learned Counsel for the petitioner submits that the petitioner is approaching this Court even when the petitioner has a statutory remedy under the provisions of the very Act such as an appeal provided to the appellate authority as against this order, inasmuch as the impugned order has come to be passed after the year in question is over and at a time when a regular assessment order could have been passed instead of a provisional order. Learned Counsel submits that this Court should stay the recovery proceedings pursuant to the impugned order as, in similar other earlier cases, this Court had occasion to intervene in such matters and while the assessees who had suffered similar orders were given relief by directing the respondent-department not to enforce the demand and a further direction was issued to the respondent-authority to conclude the regular assessment.

3. In support of such submission, learned Counsel has brought to my notice orders passed by this Court earlier, in W.P. Nos. 13861 to 13871 of 1997 dated February 24, 1999 and another order dated April 15, 1999 passed in W.P. Nos. 13805 to 13807 of 1999, order dated April 13,1999 in W.P. No. 13461 of 1999 and order dated June 28, 1996 in W.P. No. 15897 of 1996 connected with W.P. Nos. 16102 to 16112 of 1996. Learned Counsel submits that on the strength of such orders and with a view to maintain judicial consistency and propriety, a similar relief should be granted to the petitioner in the present case also and the writ petition should be necessarily allowed and the impugned orders quashed.

4. A perusal of these orders indicate that in none of these orders this Court had occasion to invalidate a provisional assessment order. In fact this Court never considered any legal question such as the validity or otherwise of a provisional order if the same is passed after the end of the year or if a demand pursuant to a provisional order is sought to be enforced even subsequent to the filing of a regular return by the assessee for the entire year.

5. Under the scheme of the Act, provisional assessment orders can be passed on the monthly returns filed by the assessee as also on the annual returns, u/s 12-B(iv) of the Act read with Section 28(6) of the Act. A provisional assessment order of this nature is also an order which can be appealed against to the appellate authority u/s 20 of the Act. The levy under the Act essentially being an indirect levy, the dealer collecting tax from the buyers is obliged to remit such taxes as and when he receives it, by filing even monthly returns and taxes so paid can all be adjusted as against the final assessment and the demand to be raised. The amount is paid by way of advance tax and by way of provisional payment and will be adjusted towards the regular assessment.

6. When an officer who is competent to inspect the premises or records of an assessee and finds justification even for passing a provisional order, he may pass such an order and raise a demand based on that. Some such situations may be when the dealer is not furnishing true and proper accounts or even when a dealer is not likely to continue his business for the whole of the year, etc.

7. In fact a provisional order does not automatically become redundant or bad in law. But, what is provided for is whenever demands have been raised pursuant to the provisional assessment order and such tax has been paid, it is always subject to a final assessment order and can be sought to be adjusted against the final demand made on the assessee.

8. As the very name indicates, the order is provisional in nature. However, Sri Narayan, learned Counsel for the petitioner has also urged that calling upon the assessee to make payment pursuant to a provisional assessment order and the demand based on the same and thereafter passing a final assessment order and subsequently calling upon the assessee to pay tax, virtually amounts to subjecting the assessee or the dealer to harassment akin to double jeopardy.

9. The submission is misconceived. There is no concept of double jeopardy in

civil proceedings, particularly in the course of the authorities under the Act determining the liability of a dealer either by way of a provisional assessment order or on the basis of a regular assessment order. So long as a statutory authority is acting within the statutory limits, a mere inconvenience or hardship pleaded by a particular dealer cannot be construed as amounting to an illegal or an un-permitted act on the part of a statutory authority. The doctrine of double jeopardy is in no way attracted to a situation of the present nature. The submission is rejected.

10. In so far as the submission that this Court having consistently granted reliefs to persons like the petitioner, whenever a complaint is brought before this Court in a writ petition complaining that a demand pursuant to provisional assessment order is sought to be enforced even when the return before passing a regular assessment order, is filed and the assessing authority, instead of passing a regular assessment order is still trying to enforce a demand based on provisional assessment order is concerned.

11. In the present case, the petitioner has not even pleaded as to when the petitioner has filed its regular return for the period in question. More important aspect is that there is no principle of law laid down by this Court in the decisions/ orders relied upon by the learned Counsel for the petitioner, interpreting any provision of law. On the other hand, on an examination of some of the more relevant provisions of law, I find that there is no impediment in law for enforcing the demand. May be for the sake of convenience or having regard to the particular facts and circumstances, this Court in its discretion had granted certain relief to a particular petitioner in a case. That does not necessarily mean that this is a law laid down by this Court involving any principle of law or interpreting any provision of the Act.

12. In the present case, it is open to the petitioner to pursue its remedies as provided under the statute and also seek for passing of orders if he has already filed regular return and not to enforce the demand. Exercise of discretion in favour of the petitioner or interference at this stage on a complaint made by the petitioner does not arise. Accordingly this writ petition is rejected.

