(1981) 03 KAR CK 0002

In the Karnataka High Court

Case No : WP 3745/80

Sadananda Rao Y. APPELLANT

Vs

Cto Tiptur RESPONDENT

Date of Decision : 10-03-1981

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12b(2)

Citation : (1981) 2 KarLJ 60

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. This petition is disposed of by this order after notice to respondent and after hearing counsel for respondent and the petitioner.

2. The petitioner is the proprietor of a hotel which provides both boarding and lodging. The hotel is situated at Tiptur. He was an assessee under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as ''the Act''). He was filing his monthly returns and paying taxes under the Act voluntarily in advance under S. 12B(1) of the Act for the year commencing from I April, 1978. In the return filed in Form-3 for September, 1978, the petitioner while disclosing his turnover claimed exemption that he was not liable to pay any tax in view of the decision rendered by the Supreme Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, AIR 1978 SC 1591. While submitting the monthly statements for the period from April, 1979 to December, 1979, the petitioner also claimed exemption on his traps-actions on the basis of the aforesaid Supreme Court-decision. The records disclose that some proposition notice was sent by the respondent-C.T.O., Tiptur calling upon the petitioner to disclose his turnover in respect of his sales in the Sweet-meat shop attached to the hotel. But nothing appears to have been done in respect of that notice by the respondent C.T.O.

3. However, on 7-2-80, Respondent C.T.O. issued two notices to the petitioner calling upon him to pay. Rs. 6331-40 Ps. towards tax for the period from September, 1978 to the end of March, 1979. The second notice was for Rs. 90001-10 Ps. towards tax for the period from March, 1979 to December, 1979.

The petitioner aggrieved by the above two demand notices has approached this Court under Art. 226 of the Constitution interalia contending that the two notices are without jurisdiction and liable to be set aside.

4. Sri S.P. Bhat, learned counsel appearing for the petitioner has advanced two arguments. The liability of the petitioner to pay tax under the Act on the turnover is a matter to be adjudicated before the, respondent at the appropriate time in the light of the Supreme Court decision rendered in the case of Northern India Caterers (India) Ltd., (1) and, in any event having regard to S. 12-B(2) of the Act, the CTO. is required to quantify the short fall of the tax only at the end of the year and make a demand together with such penalty as may be imposed in terms of that section and not otherwise. In somewhat similar circumstances in the case of Sree Vijay Industries v. Commercial Tax Officer, Chitradurga, 46 STC 427. Srinivasa Iyengar, J, has held that if the petitioner does not admit and pay any tax in advance and at the end of the year he is assessed and is liable to pay tax and has failed to make payment of any tax, then he would be liable for penalty which would extend to one and half the times the tax payable during any month or for the entire year in the aggregate, but cannot be so rejected to a demand when the obligation to pay tax is not admitted.

5. In the records produced by the learned Government Pleader, there is no evidence that any assessment proceedings as such have been concluded in the light of the denial of the assessee to be liable to pay tax under the Act. In these circumstances I agree with the view expressed by Srinivasa Iyengar, J. in the cape referred to above (46 S.T.C. 427). Therefore, the demand notices produced as Annexures ''B'' and ''C'' along with the petition are liable to be quashed. They are accordingly quashed. However, the Commercial Tax Officer is directed to collect the tax only after assessment in accordance with law for the relevant period and bring to tax, if any, the turnover of the petitioner.

There will be no order as to costs.

