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(1981) 05 KAPT CK 0019

In the Karnataka Appellate Tribunal

Case No : S.T.A. 899/80

Shankar Trading Co. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 29-05-1981

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12(4)

Citation : (1981) 1 KarLJ 103

Hon'ble Judges : S. Puranik, Member;B. S. Naik, J

Judgement

B.B. Naik, M.-The appellant has filed this appeal against the order of the Deputy Commissioner of Commercial Taxes (Appeals), Ballary passed under KST. AP. 186/79 80 dated 19-3-1980 for the year ending 11-11-1977 dismissing the appeal.

2. The facts of the case are that the Commercial Tax Officer, Gangavathi, had passed the assessment for the year 24-7-1976 to 11-11-1977 on 16-11-1978 in which he has made the best judgement assessment including the suppressed turnover of about Rs. 35,000-00. The assessing officer had passed the penalty order simultaneously in the same order under Section 12(4) and the penalty of Rs. 500/- was levied for the reasons that the appellant had not disclosed certain turnover in the return filed by him. Against this penalty order he had filed the first appeal and he was unsuccessful.

The case was posted for hearing of the appeal on 30-4-1981 and on 25-5-1981 but the appellant failed to respond. Therefore the case is decided expartse on merits.

4. In the grounds of appeal, it is contended that the assessment order was passed under Section 12(2) of Karnataka Sales Tax Act, 1957 by accepting the revised turnover. The decision cited by the first appellate authority (Bhadra Spinning Mills Pvt. Ltd. 35 STC 189) is not applicable to this case. Section 12(4) refers to the turnover that was not disclosed by the dealer in his return or the case of failure to submit the return. But in this case the appellant had submitted

the return. Therefore the penalty could not be levied and in support of his contention he has cited the decision in the case of M/s D.D. Chougalay v. State of Karnataka, 1957 KLJ 170. Therefore he pleads that the penalty of Rs. 500 should be cancelled.

5. Sri Boregowda, the learned State Representative argued on behalf of the State and contended that the revised return filed by the appellant on 8-9-1978 is not a return at all as he had filed the original return without including the suppressed turnover. After inspection made by the Commercial Tax Officer (Enforcement) the suppression of turnover was detected at about Rs. 35,000-00 and the appellant has included the said turnover in the revised return and submitted it in order to escape from the levy of penalty. He cites the decision Bhadra Spinning Mills Pvt. Ltd. v. State of Madras, 35 STC 189, and contended that if the assessing officer had not investigated the matter the turnover would not have come to light. Therefore the penalty was correctly levied. He cites the decision in the case of M.V. Pavadai Chettiar & Sons v. State of Madras, 21 STC 67 and contended that the filing of the supplementary return would not be a ground for condoning the assessee''s wilful default and the assessing officer would be competent to levy penalty on him. He cites another decision 34 S.T.C. 310 and contended that the revised return filed late is a case of no return it is an attempt made deliberately to gain an undue advantage in the matter of penalty by revised return. Therefore he pleads that the penalty levied by the lower authorities should be confirmed.

6. From the records, it is seen that the appellant had filed the original return on 8-12-1977 showing the sales at Rs. 5,85,782-52 and showing the tax payable at Rs. 8,269-06. He had not shown the purchase turnover liable to tax in this original return. The Commercial Tax Officer (Int) has inspected the business premises on 6-9-1977 and found that the appellant had suppressed the sales on taxable goods worth Rs. 5,078-00 taxable at 4%. He had also suppressed the purchase turnover of oil seeds worth Rs. 30,176-00 taxable at 3% which was also made use of for the purpose of assessment. The appellant has filed the revised return on 8-9-1978 (late) including the sales turnover and also the purchase turnover suppressed by him and the tax payable was shown at Rs. 9,377-00, thus showing the excess tax payable at Rs. 1,108-00. Under Section 12(4) of the Karnataka Sales Tax Act, 1957 when making any assessment under Sub-Section (3) the assessing authority may direct the dealer to pay in addition to the tax assessed a penalty not exceeding 11/2 the amount of tax due on the turnover that was not disclosed by the dealer in his return. But in this case the appellant has not disclosed the turnover worth of about Rs. 5,000.00 on which the amount of tax at Rs. 1, 108-00 is involved. The revised return filed by the appellant late on 8-9-1978 is not a return at all. The original return filed by him within the prescribed time of 30 days after the close of the year can be called a return. There fore the appellant has not disclosed the turnover in the return filed by him. Even though the assessing officer has passed the order by accepting a revised return it is not actually the case of acceptance of the return as the assessing officer has not accepted the original return filed in time. Even though

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the section is wrongly quoted as under Section 12(2) it is not a case of acceptance of the return but it can be said that the accounts reported after including the suppressed turnover are accepted by the assessing officer. The decisions cited by the appellant 1975 K.L.J. 170 is not applicable to this case. It was held in that case that it was not competent to impose penalty under Section 12(4) in respect of turnover included in the return filed under Section 12(1) of the Act. Under Section 12(1) the appellant was required to submit the return in such manner and within such period as may be prescribed. Under rule 18 the appellant was required to submit the return in Form 4, within 30 days after the close of the year to which the return relates. But in this case the appellant has not filed the revised return within 30 days after the close of the year. Therefore it is not a return at all. Hence this decision is not applicable. The decision cited by the learned State Representative 34 S.T.C. 310, A.R.K. Perumal Chettiar v. Jt. Commercial Tax Officer, it was held as follows:

"In the instant case, the circumstances disclose that the petitioner, conscious of the penal provisions under section 12(3), wanted to file a return and make a show of it, so that he could escape the higher scale of penalty. This is how his conduct has been described, by the authorities. It is in these circumstances that I am of the view that this is virtually a case of no return, though an attempt was made to usher in a deliberately incorrect return so as to gain an undue advantage in the matter of the penalty leviable under Section 12(3)."

In the decision cited by the learned State Representative 21 S.T.C. 67, it was held that;

"The filing of the supplementary return would not be a ground for condoning the assessee''s wilful default and the assessing authority would be competent to levy a penalty on him."

Under such circumstances, we are of the opinion that the lower authorities have correctly levied the penalty under Section 12(4). Further the appellant was liable to pay the penalty at 11/2 times the tax involved which would come to about Rs. 1,500-00 while the assessing officer has levied a nominal penalty of Rs. 500 only. Thus he has shown undue favour to the appellant which has escaped the notice of the department. It is a clear cut suppression deliberately made by the appellant and he had not challenged the inclusion in the turnover at the time of assessment. The department will have to take a serious notice on the conduct of the assessing officer in showing undue favour to the appellant. As a nominal penalty is levied as already discussed we confirm the same and dismiss the appeal.

7. In the result the appeal is dismissed.

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