**(2006) 03 KAR CK 0009**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 22837 of 2005

Shashi Distilleries APPELLANT

Vs

State of Karnataka and Others RESPONDENT

**Date of Decision :** 27-03-2006

**Acts Referred:**

**Citation :** (2006) 3 KCCR 1536 : (2007) 10 VST 264

**Hon'ble Judges :** Mohan Shantanagoudar, J

**Bench :** Single Bench

**Advocate :** G. Rabinathan, for the Appellant; Niloufer Akbar, A.G.A., for the Respondent

**Final Decision :** Dismissed

# Judgement

Mohan Shantanagoudar, J.—The petitioner has sought for a direction in the name of writ of certiorari for striking down the words "(any amount already paid before March 11, 2005 shall not be reckoned for this purpose)", occurring in the Government Order No. FD 91 CSL 2005, dated March 31, 2005. Consequently, the petitioner has also sought for quashing the endorsement dated May 17, 2005 issued by the Deputy Commissioner of Commercial Taxes, Assessment-I, Bangalore, vide annexure "H" to the writ petition.

2. Few facts leading to this writ petition are as under:

The petitioner was levied with taxes and penalties to the tune of Rs. 2,11,28,670 in the year 1997-98. The said amount of taxes and penalties was paid by the petitioner in instalments between January 12, 1999 and December 4, 2003. Subsequently, the assessing authority demanded a sum of Rs. 60,75,772 towards interest in view of delayed payment of taxes. The said amount of interest payable by the petitioner was paid in instalments between February 28, 2004 and December 31, 2004. These facts are not in dispute.

3. The Deputy Chief Minister, who was holding the finance portfolio, in his budget speech, announced the Kara Samadhana Scheme. The relevant portion of the

budget speech of the Finance Minister is as under:

171. Kara Samadhana Scheme.-Several tax amnesty schemes have been announced in the past to reduce arrears of sales tax but with limited success. Considering that value added tax is being introduced from April, 2005 and the need to reduce the arrears of sales tax as we go into the new system, as a last chance to those who would like to clear their arrears, I propose to announce the following scheme:

172. If a dealer pays the tax admitted or assessed in full for any year up to March 31, 2004, on or before May 30, 2005 along with 10 per cent of the penalties and interest levied or leviable and also withdraws any appeal filed disputing the tax assessed or penalties levied, the balance 90 per cent of the interest and penalties levied or leviable would be waived.

173. If a dealer pays 10 per cent of the penalties and interest levied or leviable for any year up to March 31, 2004, on or before May 30, 2005 and also withdraws any appeal filed disputing the penalties levied, the balance 90 per cent of the interest and penalties levied or leviable.

(underlining by me)

4. In pursuance to the said announcement made by the Finance Minister in his budget speech, the Government of Karnataka issued an order dated March 31, 2005, which is produced at annexure "F". In the said Government Order, it is clarified that if taxes are already paid before March 11, 2005 (i.e., the date of budget speech), they shall not be reckoned for the purpose of Kara Samadhana Scheme. The grievance of the petitioner is that the Government Order dated March 31, 2005 which is issued in pursuance to the budget speech of the Finance Minister runs contrary to the budget speech, i.e., the promise made by the Government and that therefore, the Government Order insofar as it relates to the insertion of words "any amount already paid before March 11, 2005 shall not be reckoned for this purpose" is bad in the eye of law and that therefore, the said words will have to be deleted from the Government Order.

5. The said submissions are opposed to by Smt. Niloufer Akbar, learned Additional Government Advocate, who, inter alia, contended that the entire budget speech relating to Kara Samadhana Scheme has to be read in its totality and that if the same is read in toto, it makes clear that the tax benefits are given to the defaulters who would like to clear the arrears.

6. As could be seen from paragraph 171 of the budget speech, it is clear that as the value added tax is being introduced, and as there is need to reduce the arrears of sales tax to go into the new system and to give a last chance to the defaulters if they want to clear their arrears, the Kara Samadhana Scheme is announced. The budget speech was made in the floor of assembly on March 11, 2005. The intention of the Government is clear as could be seen from paragraph 171 of the budget speech that the Kara Samadhana Scheme should be issued for

the existing defaulters as on the date of the budget speech. The same is made further clear in paragraph 172 of the budget speech that the taxes admitted and assessed in full for any year up to March 31, 2004 shall be paid on or before May 30, 2005, along with 10 per cent of the penalties and interest levied or leviable and also withdraws any appeal filed disputing the tax assessed or penalties levied. There cannot be any dispute that appeal will lie only if there is a dispute relating to assessment of tax. Generally, the tax due would not be paid by the assessees during the pendency of appeals. If the budget speech of the Finance Minister is read in toto, it would make it clear that the same would enure to the benefit of the defaulters as on the date of budget speech. In other words, it is prospective in nature.

7. In this case, as aforesaid, the entire amount of tax and penalties were paid back as on December 4, 2003 and whereas, the interest were cleared on December 31, 2004. The budget speech was made on March 11, 2005. Thus, there were no dues to be paid by the petitioner towards tax or interest as on March 11, 2005. In this view of the matter, Kara Samadhana Scheme as announced by the Finance Minister will not be applicable to the petitioner.

8. The Government Order, vide annexure F, which included the words "any amount already paid before March 11, 2005 shall not be reckoned for this purpose" does not also run contrary to the budget speech. The aforesaid words in the Government Order are only clarificatory in nature. As aforesaid, as the said words do not run contrary to the budget speech of the Finance Minister, the Government Order dated March 31, 2005 cannot be said to be illegal. Consequently, the order dated July 17, 2005 issued by the Deputy Commissioner of Commercial Taxes (Asst.) rejecting the prayer of the petitioner for refund of 90 per cent interest, cannot be interfered with as the same is legal and justified. Learned Counsel for the petitioner submits that the action of the Government in denying the benefit to the regular payer of tax like the petitioner would be discriminatory in nature. The said submission cannot be accepted, inasmuch as, the Government has not discriminated from among the class of people, i.e., defaulters. As aforesaid, the Kara Samadhana Scheme is applicable only in respect of defaulters as on the date of budget speech. The class of defaulters is entirely different from class of non-defaulters. As the petitioner had paid the taxes and interest earlier to the budget speech, he cannot be termed as defaulter, but shall be termed as non-defaulter. By virtue of the Government Order in question, no discrimination is made between the defaulters inter se or non-defaulters inter se. In view of the above, I do not find any good ground to interfere in the Government Order, as well as the order passed by the Deputy Commissioner of Commercial Taxes (Asst.), Bangalore, dated May 17, 2005 vide annexure H and therefore the petition is liable to be dismissed.

9. Accordingly, writ petition is dismissed.

 