**(1998) 03 KAR CK 0026**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 14285 of 1991

Sri Mahendra Durgaprasad Dadkar APPELLANT

Vs

The C.T.O. RESPONDENT

**Date of Decision :** 31-03-1998

**Acts Referred:**

Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 29 (1) (d), 29 (2) (c), 31
Karnataka Tax on Entry of Goods Act, 1979 — Section 23

**Citation :** (1998) ILR (Kar) 3100

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

**Bench :** Single Bench

**Advocate :** Ramabadran, for the Appellant; Shivayogiswamy, HCGP, for the Respondent

# Judgement

V.K. Singhal, J.—The petitioner has issued five cheques for a sum of Rs. 99,022.97 beside Rs. 10,000/- being compound fee. The petitioner carried on business in job work of rubberizing spindles. The second respondent inspected the premises of the petitioner on 28.5.1991 and it was found that there is a liability of tax under Entry Tax Act, Central Sales Tax Act as well as K.S.T. Act. Statement of petitioner was recorded wherein the liability was admitted and taxes were paid under protest. Learned Counsel for the petitioner has prayed that unless there being a determination of liability of tax the provisions of Section 31 of the K.S.T. Act, or Section 23 of Karnataka Tax on Entry of Goods Act, could not be invoked.

2. Arguments of the Learned Counsel for the parties have been heard.

Section 31 of the Karnataka Sales Tax Act is as under:-

"31. Composition of offences:- The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence punishable under this Act, by way of Composition of such offence--

 

(a) where the offence committed is under Clause (d) of subsection (1) of Section 29 of Clause (c) of subsection (2) of Section 29, in addition to the tax or amount not paid or evaded to be paid, a sum of money not exceeding one thousand rupees or double the amount of tax or amount so remaining unpaid or evaded or to be paid whichever is greater, and

b) in other cases, a sum of money not exceeding one thousand rupees."

From the perusal of the above provisions, the power of composition could be exercised where the offence has already been committed or is reasonably expected to have been committed. The offence which have been contemplated u/s 31(a) are in respect of Section 29(1)(d) and 29(2)(c). The offence which have already been committed could be ascertained only when the assessment order is framed and liability of tax is determined, and a finding is also recorded thereunder that an offence has been committed. This Court in the case of PUTTASWAMY v. COMMERCIAL TAXES OFFICER (1988) 68 STC 241 has already decided this issue. Beside the reasoning which has been given in the said judgment, it may also be noted that unless there is final adjudication of failure to pay within the time allowed, any tax assessed or any penalty levied on him under the Act or determination of fraudulently evaded payment of any tax or any amount payable by him under the Act no action u/s 31 could be taken.

3. The other situation which has been contemplated by Section 31(aa) is where the offence is committed u/s 27(2) in respect of non issue of bills of cash memorandum. The offence is committed in that case when the bill is not issued or obtained. Since the offence has already been committed and the respondent found clinching and sufficient evidence for prosecuting the assessee in respect of the offence, action could be taken u/s 31 of the Act. In Section 31 the words "where the offence is reasonably suspected to have been committed" have to be read over only in respect of offence u/s 31(aa).

4. Learned Counsel for the respondent has drawn my attention tot he decision given by the Full Bench of this Court in the case of S.V. Bagi Vs. State of Karnataka, wherein it was observed that the authorities are not entitled to recover composition for by coercive process. No appeal could be filed u/s 20 challenging the order of composition. This judgment does not apply to the present matter because neither the payment has been made till date nor the question of filing an appeal arises. Composition is to the present matter because neither the payment has been made till date nor the question of filing an appeal arises. Composition is the determination of civil damages in respect of a criminal offence. It is a bilateral act and could be enforced only when both the parties agree, and no coercion could be exercised.. The question as to whether there is coercion or not is a disputed question of fact and cannot be determined in the extraordinary jurisdiction under Article 226 of the Constitution. If there is coercion by the authority the assessee can immediately send a telegram to the higher authorities, file a complaint, lodge a criminal case or move to the authority also. ff no steps are being taken then directly approaching this Court

 

with the plea that the amount was recovered under coercion cannot be accepted. In the present case there was no payment at all, i.e., the cheques were given but not encashed because of the interim order of this Court, therefore it will be considered as not paid. Since the assessee does not want composition, the cheques which have otherwise become state shall be returned to him. The amount of Rs. 10,000/- could be adjusted with the liability which the assessee may have in respect of tax under the Karnataka Tax on Entry of Goods Act, Central Sales Tax Act or Karnataka Sales Tax Act.

A copy of this order be sent to the Commissioner of Commercial Taxes for proper directions to the Commercial Taxes Officers so that no allegation of illegal collection is made, and a proper procedure be given for the guidance of the officers.

Petition stands disposed of accordingly. Respondents are free to make assessment/reassessment in accordance with law.