(1981) 03 KAPT CK 0001

In the Karnataka Appellate Tribunal

Case No : STA 225/80

S.S. Hiremath APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 27-03-1981

Acts Referred:

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

Citation : (1981) 1 KarLJ 54

Hon'ble Judges : T. Balachandran, Member;R. S. Chakrabhavi, J

Judgement

R.S. Chakrabhavi, M.-This appeal has arisen from the order passed on 30-1-1980 by the Assistant Commissioner of Commercial Taxes (Appeals), Dharwar Division in Appeal No. BR/KST/AP/267/1979-80.

2. The appellant, a dealer at Bhuspet, Hubli, declared under the Karnataka Sales Tax Act, 1957 (hereinafter called the Act) a total turnover of Rs. 8,292-50 for the assessment period from 12-11-1977 to 31-10-1978 and claimed to be non-assessable. The Assistant Commercial Tax Officer, III Sub-Circle, Hubli, in his best judgment, assessed the appellant to tax of Rs. 1,010 on an estimated taxable turnover of Rs. 20,000 out of an estimated total turnover of Rs. 30,000. The authority levied penalty of Rs. 100 under Section 12(4) of the Act and a penalty of Rs. 150 under Section 12B(2) of the Act. The dismissal of the first appeal against the levies of tax and penalty led to the present appeal.

3. It is submitted for the appellant that the impugned assessment does not conform to the requirement of law. The submission is not without merit.

4. In the course of the assessment it was found that the appellant had not maintained the prescribed account books; that the appellant had not prepared any stock inventory: that the sales of the appellant were not supported by bills; that the sales had been recorded in a mechanical fashion without any variation of the figures on shandy days; that the appellant had done business regularly and continuously; that the appellant''s business was run in a building which would fetch him an annual rental of Rs. 6,000/-, and that the purchases shown by the

appellant would not be sufficient even to meet the requirement of his family. In consideration of these factors the assessing authority rejected the return of the appellant and resorted to an assessment by best judgment. In exercising the best judgment however the authority committed a serious error. It is imperative that an assessment by best judgment must be preceded by a notice of the proposed estimation to the assessee. The essential requirements of such notice are a sound basis for the estimation of turnover and clear indication of the basis to the assessee. In the proposition notice issued to the appellant are set out only the factors which compelled the assessing authority to resort to an estimation of the appellant''s turnover and the figures of the proposed estimation. The basis for the estimation finds no mention in the proposition notice. This omission vitiates the notice and the assessment in pursuance of it. The first appellate authority has attempted to justify the impugned assessment order on the basis of the initial capital of Rs. 4,000/- invested by the appellant in business. It is gatherable from the record that the appellant has been doing business right from the year 1974-75. The appellant''s turnover has been estimated at Rs. 16,000 for the year 1974-73, Rs. 16,500 for the year 1975-76 and Rs. 21,518 for the year 1976-77. The significance of the initial investment is lost in view of these estimations. The capital invested by the appellant in 1974-75 could not be any useful guide to determine his turnover in year 1977-78. The impugned assessment lacks a rational basis and cannot therefore stand scrutiny. The case has to be remitted for a reappraisal. The previous history of the case, general change in commercial conditions and the possible improvement of the appellant''s business could form an appropriate basis for the estimation of his turnover.

5. Another serious defect noticed in the impugned assessment order is that the levy of penalty is not supported by any ratiocination. The logical process through which conclusions are drawn from facts ought to find expression in a fair degree in the assessment order. Imposition of penalty without a statement of why and how it was imposed, cannot be valid.

6. Yet another serious defect in the impugned assessment order is that the levy of penalty under Section 12B(2) of the Act forms part of the assessment order itself. Penalty under Section 12B(2) of the Act must be levied by an order distinct and separate from the assessment order.

7. In the result, the appeal is allowed. The impugned orders of the authorities below are set aside. The appellant shall be assessed by best judgment afresh with due attention to our observations herein. Institution fee shall be refunded.

