

(2005) 05 KAR CK 0030
In the Karnataka High Court
Case No : Writ Appeal No. 1716 of 2005

State of Karnataka and Others

APPELLANT

Vs

Jayalakshmi Wine Land and Another

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 B (4), 13 (2)

Citation : (2005) ILR (Kar) 3284

Hon'ble Judges : N.K. Sodhi, C.J.;B.S. Patil, J

Bench : Division Bench

Advocate : K.N. Putte Gowda, AGA, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sodhi, C.J.—The short question that arises for consideration in this writ appeal is whether the penalty levied u/s 12-B(4) of the Karnataka Sales Tax Act, 1957 (for short "the Act") for the assessment year 1992-1993 is liable to be waived in terms of Circular No. 3/1999-2000 issued by the Commissioner of Commercial Taxes, Facts which lie in a narrow compass may first be noticed.

2. Respondent no. 1 is a dealer in liquor holding CL-1 licence on the basis of which it is carrying on its business. The business premises of this respondent were inspected by the Commercial Tax Officer on 30-03-1993 and it was found that the monthly tax which was required to be paid had not been deposited. Tax amount for the year 1992-1993 was paid on 02-12-1993. Since the tax had not been paid in time the Commissioner of commercial taxes levied a penalty of Rs. 5,44,023/- u/s 12-B(4) of the Act. This penalty is sought to be waived in terms of Circular No. 3/1999-2000.

3. In his budget speech for the year 1999-2000 the Deputy Chief Minister who was also the Finance Minister had, with a view to reduce litigations and mop up revenue locked up in disputes, declared that as one-time relief measure the penalty levied u/s 12-B(4) and 50% of interest leviable u/s 13(2) of the Act on

tax relating to assessment years up to 1996-1997 where final assessment had been communicated to the assessee and the assessee had not cleared the liability would be waived if the arrears are paid before 30.06.1999. On the basis of this statement, the Commissioner of Commercial Taxes issued Circular No. 3/1999-2000 providing for waiver of penalty in the aforesaid terms. It was decided to give wide publicity to the Circular so that large number of assesses/dealers under the Act could take advantage of the one-time relief measure announced by the Finance Minister. It is in terms of this circular respondent No. 1 claimed that the penalty levied on it for the assessment year 1992-1993 be waived. This claim was not accepted by the Department and an endorsement dated 21.03.2003 was issued informing respondent No. 1 that according to the scheme if original tax and penalty was due then only a dealer was eligible for the waiver of penalty u/s 12-B(4) of the Act. Since respondent No. 1 had already paid the original tax long time back the claim for waiver of penalty was declined. The amount of penalty was then sought to be recovered from the Manager, Corporation Bank, Gadag, where respondent No. 1 had its accounts. It was this action of the Department which came to be challenged in writ petition No. 50407/2003 which came up for hearing before a learned single Judge who by order dated 12.12.2003 allowed the same and remitted the matter to the Department with a direction to consider the claim of respondent no. 1 in regard to waiver of penalty and pass an appropriate order within four weeks from the date of receipt of a copy of the order. It is against this order that the Department has filed the present writ appeal.

4. We have heard the learned State counsel and are of the view that there is no merit in the writ appeal. A bare perusal of Circular No. 3/1999-2000 would show that an assessee is entitled to have the amount of penalty levied u/s 12-B(4) of the Act waived on tax relating to the assessment years up to 1996-1997 where final assessments had been communicated to it and it had not cleared the liability, provided the arrears were paid before 30.06.1999. The learned State counsel very fairly concedes that the arrears of tax due from respondent No. 1 for the assessment year 1992-1993 were paid prior to 30.06.1999 and that the penalty levied also pertained to the assessment year 1992-1993. This being so we are clearly of the view that the claim of respondent No. 1 was covered by the Circular issued by the Commissioner of Commercial Taxes which in turn was based on the budget speech made by the Deputy Chief Minister-cum-Finance Minister and therefore it was entitled to have the penalty amount waived. The stand of the Department that original tax along with the penalty should have been due before the assessee could be entitled to claim waiver cannot be accepted in the light of the budget speech made by the Deputy Chief Minister and the Circular issued by the Department. The construction sought to be placed on the Circular by the Department would lead to absurd results. For instance, a dealer who has not paid his taxes and penalty would be entitled to claim the benefit of waiver, but another dealer who has paid the tax before 30.06.1999 but has not paid the penalty would be deprived of that benefit. Such a construction is

neither warranted from the language of the Circular nor is the same permissible and in our opinion would lead to absorb results. In this view of the matter the question posed in the earlier part of the judgment is answered in the affirmative and it is held that respondent No. 1 is entitled to claim the waiver of the penalty amount.

In the result, the writ appeal fails and the same stands dismissed.