(2004) 01 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No. 17852 of 2002

Syndicate Bank APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 28-01-2004

Acts Referred:

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

Citation : (2006) 130 CompCas 699 : (2004) 3 KCCR 1950 : (2006) 144 STC 633

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Tukaram S. Pal and Radhesh Prabu, for the Appellant; Niloufer Akbar, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Heard Sri Radhesh Prabhu, learned Counsel appearing for the petitioner and Ms. Niloufer Akbar, learned Government Pleader appearing on behalf of the respondents.

2. Petitioner is a nationalised Bank functioning on commercial lines. A person who had borrowed funds from the petitioner-bank and who was also a dealer and an assessee under the provisions of the Karnataka Sales Tax Act, 1957, and the Central Sales Tax Act, 1956, had for the purpose of securing repayment of the amounts borrowed by him from the petitioner-bank had it appears mortgaged one of his property in favour of the petitioner-Bank.

3. The borrower of the funds from the petitioner-bank having defaulted in repayment of the amount, petitioner-bank had filed a suit for recovery of the amount and for enforcement of the security. The said suit was decreed and for the satisfaction of the decree the property that had been mortgaged in favour of the petitioner-Bank was sold through court auction. It is significant to note that by this time the said borrower was also a defaulter under the provisions of the

Karnataka Sales Tax Act and the Central Sales Tax Act and amounts were outstanding in favour of the respondent-Commercial Tax Department and as such the respondent had also been impleaded as a party defendant to the suit.

4. It appears that it so happened there was no interested person for buying the property of the borrower which had been put to auction sale and as such the petitioner-bank itself purchased the property with the permission of the court and this event occurred during the year 1999.

5. Under the provisions of the Karnataka Sales Tax Act when once an assessee becomes a defaulter, the amounts in default become a charge and gets attached to even the properties owned by the defaulter as indicted u/s 13(2) of the Act. It was after such stage had been crossed, the property in question was sold through court auction and was in turn purchased by the petitioner-bank itself.

6. Petitioner-bank who was acting in a dual capacity in the sense that the amount that had been received by the sale of the properties belonging to the defaulter over which was a charge was in the hands of the petitioner-bank and also being a person in possession of the property of a defaulter, on which properties there was a charge under the provisions of Section 13(2) of the Act. It appears on being repeatedly reminded by the respondent-department to discharge the tax liability of the assessee in default by making payments of the tax amount in the year 1996.

7. It is of some interest to note that the tax arrears were due from the years 1957 onwards and as the tax amount had not been paid as and when it became due, the outstanding amount had attracted the provisions of Section 13(2)(ii) of the Act under which at the relevant time the amount attracted penalty at the rate of 2.5 per cent per month.

8. It also transpires that by the time the tax dues from the assessee from the year 1957-58 was paid, the last payment being as on December 10, 1997, the outstanding amount had by then attracted considerable penalty/interest u/s 13(2)(ii) of the Act. The penalty amount it appears had swollen to an extent of Rs. 10,76,724. It is when the respondent sought to recover this amount also from the petitioner-bank and at this point of time the petitioner-bank has filed an application u/s 13(2-A) of the Act before the Government seeking for waiver or reduction of this penalty. The application was made on May 20, 1997.

9. Petitioner had approached this Court in an earlier round by filing Writ Petition Nos. 5766 and 7485 to 7489 of 2001 (copy at annexure B). This Court by order dated March 12, 2001 directed the respondent-authorities to consider and pass orders on this application on a submission made to this effect by the learned Government Pleader who had appeared for the respondents. In fact it had been submitted before the court that the representation said to have been made by the petitioner-bank will be considered and disposed of, on the assumption that it had remained before the Government without any orders having been passed on the same.

10. There was a factual mistake in the submission made at that time in the sense as of now it is claimed by the respondents that an order had already been passed on the said representation/ application of the petitioner filed u/s 13(2-A) of the Act as per order dated December 13, 2000 of which now figures as annexure D to the petition. The version of the petitioner is that such order had never been communicated to the petitioner, that it was only for that reason petitioner had approached this Court complaining that no orders had been passed. Under the communication dated December 13, 2000 the Government has declined the request of the petitioner for waiver or reduction on the premise that it is not open to the petitioner-bank to file an application of this nature invoking the provisions of Section 13(2-A) of the Act. It is the correctness and the legality of this communication that is called in question by filing the present writ petition.

11. Sri Radhesh Prabhu, learned counsel for the petitioner-bank, has urged several contentions. The first and foremost of the contention is that the respondent-State could not have summarily rejected the application of the petitioner holding that the petitioner has no locus or right to file an application seeking for waiver of penalty. The other contention is that the petitioner had not been given proper opportunity and that the order is virtually in disregard of the directions of this Court issued in writ petition vide order dated March 12, 2001, that the respondent possibly cannot set up a communication of this nature as it discards the directions that had been issued by this Court, that the order cannot be sustained in the teeth of the direction and that even now suitable directions has to be issued to the respondents for disposal of the petitioner''s application u/s 13(2-A) of the Act in accordance with law, etc.

12. Statement of objections has been filed and in that the order impugned in this writ petition is sought to be supported. It is contended that the petitioner being a person who is an auction purchaser of certain properties that belonged to an assessee in default and that while the assessee himself could have filed an application u/s 13(2-A) of the Act seeking waiver of the penalty amount that accrues or arises in view of the provisions of Section 13(2)(ii) of the Act, the petitioner cannot file or maintain such an application.

13. It is also asserted on behalf of the respondents that as per the records the communication under annexure D had been forwarded to the petitioner, that the petitioner was in the know-how of the same and if the petitioner had not brought to the notice of the court such development no exception can be taken on the conduct of the respondents, etc.

14. Sri Radhesh Prabhu, learned counsel for the petitioner, has fairly submitted that it may not be necessary to go into such disputed facts except to consider the legal effect of the provisions of Section 13(2-A) of the Act and as to whether the petitioner can said to be a person who can maintain an application of this nature for the relief of seeking waiver or reduction of levy of penalty u/s 13(2)(ii).

15. I have been taken through the provisions Section 13(2)(ii) and also Section

13(2-A) of the Act under which the application has been made. These provisions read thus:

13(2)(ii). the person or persons liable to pay the tax other than tax payable in advance for any year under Sections 12 and 12B or any other amount due under this Act shall pay a interest equal to two per cent of the amount of tax or any other amount due remaining unpaid for each month after the expiry of the time specified under Sub-section (1).

13(2-A). Notwithstanding anything contained in Sub-section (2), where the amount of interest does not exceed rupees five lakhs the Commissioner and in other cases the State Government may, subject to such conditions as may be prescribed, remit the whole or any part of the interest payable in respect of any period by any person or class of persons.

16. The question that arises for consideration is as to whether the penalty payable by any person or class of persons as occurs in Section 13(2-A) includes a person like the auction purchaser who gets into possession of certain properties which had belonged to the assessee in default and which properties were subject to a charge for non-payment of the tax amount.

17. In the present case, the petitioner unfortunately acts in a dual capacity as a person who is holding funds that have been realised by the sale of the properties that had been sold and in respect of which there was a charge created for non-payment of tax amounts and also a person who is the auction purchaser of such properties. As of now petitioner is not only in possession of such properties but also has the remaining funds from the sale of such property after discharging the tax liability of the assessee in default.

18. In so far as realising the amount of penalty from out of the sale proceeds of the properties of the defaulter is concerned there cannot be any doubt or ambiguity that the amounts due to the State having priority, the petitioner even in the capacity of a person who had obtained a decree against the defaulter and in possession of the funds which were attributable to the sale of the properties in execution of that decree cannot hold on to the amounts as against the amount due to the State for realisation of any amount due under the Act. It is only because the petitioner has not paid the entire due under the Act though the sale proceeds of the property which belonged to the assessee in default were more than sufficient to meet it, the present situation has arisen.

19. Be that as it may. The question is as to whether the so-called application of the petitioner u/s 13(2-A) of the Act has met the proper consideration and the outcome as indicated in annexure D is justified or not.

20. On an examination of the scheme of the Act particularly provisions relating to levy of penalty which is now made is termed as interest in view of the subsequent amendment to the Act effective from April 1, 2001, it indicates that it is more in the nature of compensatory levy on any outstanding amount and

penal in nature, if at all instil a sense of urgency on the part of the defaulter to remit the amount without further delay as the rate of interest is quite stiff (2.5 per cent per month earlier and now at 2 per cent per month).

21. May be when there are circumstances which justify and when the defaulter is unable to pay the tax amount for reasons beyond his control it may justify the waiver or reduction of the penalty or interest an application could be made u/s 13(2-A) of the Act seeking such concession. It is a concession which is essentially extended to an assessee in default under the provisions of the Act. The concept of any person or class of persons who is liable to pay the penalty or interest is necessarily confined to the assessee and the amounts once determined to be due by the assessee and when assessee becomes a defaulter carries the penalty or interest as provided for in Section 13(2)(ii) of the Act. Petitioner-bank, if at all, has entered the scene because of the mortgage of the properties in its favour and also as an auction purchaser of the very mortgaged property. There is no occasion or justification to expand the scope and purport of person or class of persons envisaged in Section 13(2-A), to a person like the petitioner-auction purchaser of the properties of an assessee in default. An understanding or interpretation of this nature can unduly expand the scope of provisions of Section 13(2-A) and any other subsequent auction purchaser can also seek or make an application u/s 13(2-A) of the Act praying for waiver or reduction of the penalty amount. The amount is essentially the liability of an assessee in default and it is not by the contribution of the auction purchaser and under such circumstances there won''t be any need to look into such circumstances which could justify the delayed payment on the part of a person like the petitioner-auction purchaser.

22. Even in the capacity of a person in possession of funds realised from the sale of properties which were subject to a charge for non-payment of tax amount due to the State or the respondents the position does not make such difference.

23. The penalty which is statutorily imposed runs up to the point of time when the amounts are realised. A person holding funds is bound to part with in favour of the State for the amount of tax as it is not an amount which he holds as an amount belonging to himself though in the present case the petitioner-bank has stake in that amount subject to the prior claim of the State.

24. In either view of the matter, I am of the opinion that there is no scope to include a person like the petitioner-bank as a person falling within the meaning of a person or persons as contemplated u/s 13(2-A) of the Act who can file an application seeking waiver or reduction of the penalty amount. It is held that the petitioner-bank cannot be a person who can seek the relief u/s 13(2-A) of the Act on an interpretation of this provision.

25. There is no need to look into the other disputed aspects such as if the order had been passed earlier as it would not make any difference on the outcome of the ultimate result. For the same reason petitioner cannot also question the

legality of a demand which includes interest or penalty on any outstanding amount due under the Act.

26. In the result there is no merit in the writ petition for interference as prayed for in the exercise of writ jurisdiction. Writ petition is accordingly dismissed.

