

(1968) 08 KAR CK 0014
In the Karnataka High Court
Case No : S.T.R.P. No. 38 of 1968

The State of Mysore

APPELLANT

Vs

K.A. Chadda

RESPONDENT

Date of Decision : 28-08-1968

Acts Referred:

Mysore Sales Tax Act, 1957 — Section 12 B, 13, 5

Citation : (1968) ILR (Kar) 1049 : (1969) 23 STC 407

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : Shantharaju, for E.S. Venkataramaiah, High Court Special Government Pleader, for the Appellant;

Judgement

Somnath Iyer, J.—A certain Chadda was the proprietor of a cycle trading company in Bijapur, and in respect of the period between 1st April 1960, and 31st March, 1961, the concerned Commercial Tax Officer made a provisional assessment of his turnover by which he provisionally determined u/s 12-B of the Mysore Sales Tax Act, 1957, which will be referred to as the Act, the sales tax payable by him to be Rs. 1,481.28. But the final assessment made u/s 12 disclosed that the tax really payable by the dealer was only Rs. 900. So there was a refund of the sum of Rs. 581.28 which represented the excess collection. But by then a penalty had been imposed on the dealer for default in the payment of the tax payable under the provisional assessment within the time allotted. The dealer claimed a refund of the amount recovered from him by way of such penalty to the extent of the reduction in the determination of the tax by the final assessment.

2. The Commercial Tax Officer refused the refund of that part of the penalty and the Assistant Commissioner dismissed the appeal preferred by the dealer. But the Sales Tax Appellate Tribunal directed the refund claimed by the dealer on the principle that no penalty could be imposed for the non-payment of the tax which was not payable under the final assessment, although it was, under the

provisional assessment.

3. The State challenges the order made by the Tribunal in this revision petition on the ground that the liability to pay penalty fastens itself on the dealer u/s 13 of the Act when there is a default, and that liability does not disappear when there is a reduction of the tax by the final assessment.

4. The principle on which the Sales Tax Appellate Tribunal depended was the subject-matter of the pronouncement of this Court in *Mutha Manickchand v. Commercial Tax Officer, Gangavati*. 10 LR 483 The elucidation made in that case was that when there is a reduction of the tax upon appeal or revision, the amount of reduction ceases to be tax lawfully payable under the Act within the meaning of that expression occurring in section 13, and that to that extent the penalty if paid became immediately refundable.

5. It was maintained by Mr. Shantharaju appearing for the State that there is no analogy between a case where there is reduction of the tax upon appeal or revision and a case where the tax determined by the final assessment is less than that determined by the provisional assessment.

6. But we do not find it possible to accede to this submission. Section 12-B provides for a provisional assessment and sub-section (5) of that section says that the tax provisionally determined shall be paid by the dealer within such time as may be prescribed. Sub-section (6) declares that the provisional assessment shall be subject to adjustment on completion of the final assessment. Rule 20 of the Sales Tax Rules directs, among other matters, that, if the tax due on final assessment is less than the tax determined by the provisional assessment, the excess tax paid shall be refunded.

7. Section 12 regulates the final assessment and the assessment so made is subject to appeal under the provisions of Chapter VI. Section 20(5) authorises the appellate authority to pass such orders on appeal as it may think fit. The Appellate Tribunal to which a second appeal lies u/s 22 is authorised by the second proviso to sub-section (5) of that section to direct the assessing authority to amend the assessment. Section 21 enumerates the revisional powers bestowed on the authorities enumerated therein.

8. It is manifest from the provisions of these sections that, when an order of assessment is varied either in appeal or in revision, there is a supersession of the original assessment to that extent. It is such supersession which impelled the view expressed in *Mutha Manickchand's* case 10 LR 483. that when there is a reduction of the tax upon appeal or revision, the amount of tax in respect of which there was such reduction ceases to be tax under the Act, and that since the penalty is payable u/s 13 only in a case where the tax under the Act is not paid within the prescribed time, the penalty recovered in respect of such reduction becomes immediately refundable.

9. We are unable to discern any distinction on principle between a case where

there is a reduction of the tax upon appeal or in revision and a case where the reduction is the consequence of a final assessment. The final assessment is in a sense a continuation of the provisional assessment and it is that feature of the provisional assessment which is emphasised by section 12-B(6) which makes the provisional assessment subject to the final assessment. The subordinate character of the provisional assessment in that way is further portrayed by rule 20 which directs the refund of the excess tax collected under the provisional assessment.

10. It is abundantly clear that in the same way in which the amount of reduction in appeal or in revision is not tax under the Act, such reduction in a final assessment is also not. Similarly there is as much a supersession of the provisional assessment when it is altered by the final assessment as there is when an order of assessment is varied in appeal or revision.

11. Mr. Shantharaju however contended that we should make a distinction between a case where a provisional assessment is altered by a final assessment and a case where an order of assessment is varied in appeal or in revision. His postulate was that since the provisional assessment operates with all its vigour until a final assessment is made, default in the payment of the amount determined to be due by the provisional assessment entails a penalty and will not stand obliterated by a modification by the final assessment. It does not appear to us that the principle on which the decision in Mutha Manickchand's case 10 LR 483 rests could be rendered inapplicable in that way, for the obvious reason that even a final assessment operates equally vigorously as a provisional assessment does until it stands displaced or modified in appeal or in revision. The cardinal ground on which the enunciation in Mutha Manickchand's case 10 LR 483 rests is that penalty is payable only when tax under the Act is not paid within the time prescribed, and that tax which is eventually determined to be due is the tax to which section 13 refers although it may be smaller than the tax determined to be due by a superseded order of assessment. The application of that principle to the case before us yields the result that what the Commercial Tax Officer believed to be the tax payable by the dealer when he made the provisional assessment was not really the tax charged by section 5 of the Act, and that what was so charged by that section was smaller than the tax provisionally determined.

12. So it is clear that the tax under the Act within the meaning of section 13 which the dealer was under a liability to pay was only Rs. 900 as determined by the final assessment and not the sum of Rs. 1,481.28. So in respect of the reduction, no penalty could have been properly recovered and the claim made by the dealer was an unanswerable claim.

13. In the view that we take, it becomes unnecessary for us to embark on a discussion of the question whether section 13 provides for the imposition of a penalty for default in the payment of the tax provisionally determined u/s 12-B. On that question we abstain from expressing any view in this revision petition.

14. The order made by the Tribunal is, in our opinion, a proper order, and so, we dismiss this revision petition.

15. But since the dealer has not entered appearance, we make no direction in regard to costs.

16. Petition dismissed.