

(1968) 11 KAR CK 0005

In the Karnataka High Court

Case No : S.T.R.P. No's. 50, 51 and 52 of 1967

T.S. Nazir Khan, Abdul Gaffar Khan

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 14-11-1968

Acts Referred:

Mysore Sales Tax Act, 1948 — Section 12 A

Citation : (1969) 23 STC 269

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

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; Shantaraju, for E.S. Venkataramaiah, Special Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—The petitioner is a dealer under the Mysore Sales Tax Act, and in respect of the assessment years 1960-61 and 1962-65 the turnover of his oil-mill which produced oil and oil-cakes was assessed to sales tax by the Assistant Commercial Tax officer since the turnover was less than Rs. 40,000. A proceeding was subsequently commenced u/s 12-A of the Mysore Sales Tax Act for the assessment of turnover which was believed to have escaped assessment. The proceeding so commenced by the Assistant Commercial Tax Officer was transferred to the file of the Commercial Tax Officer for the reason that the turnover when properly determined was likely to exceed Rs. 40,000. The Commercial Tax Officer then issued a notice to the petitioner and substituted new figures for the turnover determined by the Assistant Commercial Tax Officer in consequence of which the petitioner became liable to pay enhanced sales tax.

2. From the order made by the Commercial Tax Officer, in that way, the petitioner preferred an unsuccessful appeal to the Deputy Commissioner and the Sales Tax Appellate Tribunal, and in this revision petition Mr. Srinivasan for the petitioner presented a two-fold argument. The first was that the Commercial Tax Officer, who was not an assessing authority within the meaning of section 12-A of the Act, had no competence to commence a proceeding under its provisions,

which an assessing authority, or appellate authority or revising authority alone could do, and that the Commercial Tax Officer was not one of them. The second submission was that the re-assessment made by the Commercial Tax Officer was insupportable for the reason that it is arbitrary and capricious.

3. It is not necessary for us to consider the sustainability of the first submission since, in our opinion, the orders made by the Commercial Tax Officer in these three revision petitions are liable to be set aside on other grounds.

4. The petitioner, besides being the owner of an oil nil was also hulling paddy and manufacturing hour. For his oil-mill and for the other two businesses he was consuming electricity, and the main ground on which the Commercial Tax Officer proposed to make a reassessment was that the total power consumed by the petitioner in respect of these three business activities demonstrated that the disclosed turnover in respect of the oil-mill was disproportionately low. In his proposition notice, as it is called, the Commercial Tax Officer intimated the dealer that it was in the circumstances reasonable to proceed on the hypothesis that 50 per cent of the electrical energy consumed had been expended for the oil-mill and that the remaining 50 per cent had been utilized for the hulling operations and the manufacture of hour. The petitioner, in his statement of objections, asserted that the basis which the Commercial Tax Officer proposed to adopt was inaccurate, and that for the hulling operations and the hour mill as much as 75 per cent of the total electrical energy consumed by the petitioner had been expended. But in his order with respect to the period commencing on 1st April, 1960, and ending on 31st March, 1961, in which the Commercial Tax Officer discussed whether any part of the turnover had escaped assessment he said this :-

"Enquiries were made regarding escarpment of turnover and show cause notice has been issued and served on the party on 1st May, 1965. To the show cause notice, Sri Abdul Gaffar Khan has replied that consumption of electricity should not be the basis to estimate the turnover which has escaped assessment, as part of the electricity has been consumed for hulling the paddy on wages and for the flour mill. However, as per the statement, the dealer was given an opportunity to establish the facts what the quantum of consumption of electricity was made for the manufacture of oil and the remaining part for the consumption for hour mill and the electricity consumed for hulling paddy. In spite of the opportunity granted to him, he has failed to establish the facts and as the turnover of oil-seeds escaped assessment is estimated at Rs. 7,600 subject to purchase tax at 2 per cent. The turnovers of oil and oil cake escaped assessments are estimated at Rs. 27,800 and Rs. 5,700 respectively and assessed to tax as under."

5. The other two orders relating to the other two periods are of the same pattern.

6. It is undisputed that not all the electricity consumed by the petitioner was utilised for the oil-mill, and that some part of it was used for the hulling operations and some other part for the manufacture of door. While the

Commercial Tax Officer intimated the petitioner in his proposition notice that he would proceed on the basis that 50 per cent of the electrical energy was consumed for the production of oil and oil-cakes, he did not state in his order the basis on which he made the best judgment assessment; nor did he state whether the formula suggested by the petitioner was unacceptable and if so for what reasons.

7. It is true as contended by Mr. Shantaraju for the department, that a best judgment assessment such as the one made by the Commercial Tax Officer, to some extent, necessarily involves guess-work, and that since the Commercial Tax Officer did inform the petitioner that it would be reasonable to think that a moiety of the electrical energy was consumed by the oil-mills, it became the duty of the petitioner to prove the unsuitability of the formula on which the Commercial Tax Officer depended.

8. It is well-settled that although a best judgment assessment must be founded in some measure on guess-work, that guess-work must be rational and reasonable. And it would be so only if it rests upon some material which could support the estimate.

9. The Commercial Tax Officer did not disclose in his order any material, on the basis of which he found it possible to make the estimate which he made. He did not even state in his order that there was any material supporting the hypothesis that 50 per cent, of the total electrical energy consumed by the petitioner in respect of all his business activities was properly attributable to the activity of the oil-mills, and even if we could assume that he should be presumed to have proceeded on the acceptability of that postulate, he did not disclose the material which could support it.

10. In a case like the present one where the petitioner was carrying on a business in three spheres and for each of those three activities he consumed electrical energy, it was not possible for the Commercial Tax Officer to think that half the energy so consumed must have necessarily been used for the business carried on in the oil-mills. It was easy for him to institute a comparison between the production in the three spheres and to make a proper allocation of the total electrical energy consumed.

11. We do not accede to the submission made by Mr. Shantaraju that on the petitioner having been informed by the Commercial Tax Officer that the best judgment assessment was proposed to be made on the formula stated by him it became the duty of the petitioner to demonstrate its unsuitability. When power is exercised u/s 12-A of the Act for the assessment of escaped turnover, it is for the authority which proposes to make that assessment to assign reasons for the conclusion that there has been an escape of taxable turnover. That the burden of establishing that some part of the turnover escaped assessment was on the department is of course clear, and that, that is so, was not controverted by Mr. Shantaraju who, however, asserted that once the basis for reaching the

conclusion that the turnover had escaped assessment had been disclosed to the dealer it became the dealer's duty to produce materials in displacement. The acceptance of this argument would mean that all that the authority exercising the power u/s 12-A has to do is to tell the dealer that his income has escaped assessment, and that it would then become the duty of the dealer to prove that it has not. This postulate which inverts the rule as to burden of proof cannot be sound.

12. These are, therefore, cases in which the best judgment assessment made by the Commercial Tax Officer was unsustainable, and so, we set aside the orders made by him and those made by the Deputy Commissioner and the Sales Tax Appellate Tribunal in all these three cases. We make no direction in regard to costs.

13. Petition allowed.