(2003) 03 KAR CK 0046

Karnataka High Court

Case No: Sales Tax Revision Petition No. 95 of 2002

M.S. Rao — APPELLANT

Vs

Commissioner of Commercial Taxes, Karnataka, Bangalore — RESPONDENT

Date of Decision: March 10, 2003

Acts Referred:

- Karnataka Sales Tax Act, 1957 - Section 5B

Citation: (2003) 55 KarLJ 262

Hon'ble Judges: S. B. Majage, J; G. C. Bharuka, J

Judgement

@JUDGMENTTAG-ORDER

S.B. Majage, J.-The petitioner has presented this revision petition under Section 23(1) of the Karnataka Sales Tax Act, 1957 (hereinafter called as "Act"), challenging the order dated 29-4-2002 passed by the Karnataka Appellate Tribunal at Bangalore.

2. We have heard the learned Counsel for the petitioner, who submitted that in view of the decision of this Court in the case of M/s. Mycon Construction Limited, Bangalore v State of Karnataka and Another, 1999(46) Kar. L.J. 21 (HC), the Tribunal was wrong in dismissing the appeal. Perused the records carefully.

3. The facts giving rise to the present matter are that, an appeal was filed by the petitioner before the 1st Appellate Authority, challenging the order of Assistant Commissioner of Commercial Taxes, 5th Circle at Belgaum passed under Section 17(6) of the Act. However, the Appellate Authority dismissed the appeal. Hence, preferred an appeal before Karnataka Appellate Tribunal which also dismissed the appeal. Hence, this revision petition.

4. At the outset, it may be noted that the petitioner, who could have withdrawn from the system of composition by exercising his option within the period provided (as per the decision in the case of M/s. Mycon Construction Limited, supra), did not exercise that option. Admittedly, the assessment year relates to the financial year 1996-97. The stand of the petitioner before the 1st Appellate Authority was that, he was under the impression that only net turnover is computable for tax under Section 17(6) of the Act and also that the rate of tax under said provision of law is 2%. Nowhere, he has said that he wanted to go back to regular assessment under Section 5-B, nor there existed any word or sentence which showed that he wanted to revise his option under Section 17(6) of the Act. The decision in the case of M/s. Mycon Construction Limited is dated 15-12-1997. So, within twelve weeks from that date, the petitioner could have withdrawn from the system of composition. Having failed to do so and having not whispered about such withdrawal and/or exercising his option to go out of Section 17(6) of the Act, he could not have escaped from the tax provided under Section 17(6) of the Act. It would be relevant to note what has been observed in the case of M/s. Mycon Construction Limited relied on for petitioner.

"However, in view of the categorical statement made by the State in the statement of objections stating that this Court can permit the petitioners to opt for regular assessment under Section 5-B; and I have taken that factor as one of the factors to come to the conclusion that the impugned provisions in no way result in arbitrariness or violation of the right guaranteed to the petitioners either under Article 14 or under Article 19(1)(g) of the Constitution, it is necessary to reserve liberty to the petitioners to opt for regular assessment under Section 5-B of the Act notwithstanding the fact that they had opted for composition under Section 17(6) of the Act, if the petitioners, within 12 weeks from today, make an application to the concerned Assessing Authority that they may be assessed as provided under Section 5-B of the Act, and further direct the Assessing Authorities to proceed to assess the petitioners and all others, who are not before the Court, as provided under Section 5-B of the Act. This direction is binding on the State and its Assessing, Revising or Appellate Authorities wherever an application is made seeking assessment under Section 5-B of the Act and they are directed to pass appropriate orders suitably modifying the assessments".

5. In the above view of the matter, when the petitioner did not exercise his option as provided under the said decision, he could not have escaped from tax under Section 17(6) of the Act and as such, the view taken by the authorities cannot be said to be wrong so as to exercise revisional jurisdiction by this Court. That apart, no question of law is involved in the matter.

In the result, petition is rejected.