

(1974) 07 KAR CK 0003
In the Karnataka High Court
Case No : S.T.R.P. No's. 71, 72 and 73 of 1973

Arctic Ice Company

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 16-07-1974

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 20

Citation : (1975) 36 STC 91

Hon'ble Judges : G.K. Govinda Bhat, C.J; M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : P. Vasudeva Aithal, for the Appellant; M.P. Chandrakantaraj Urs, Government Advocate, for the Respondent

Judgement

Govinda Bhat, C.J.—These are three revision petitions preferred by a common assessee under the Karnataka Sales Tax Act, 1957. The petitioners are dealers registered under the Act. For part of the assessment year 1968-69 and for the whole of the assessment years 1969-70 and 1970-71, three assessment orders were passed by the Assistant Commercial Tax Officer, Mangalore, on 23rd December, 1971. Copies of the assessment orders, however, were not served on the petitioners. Demand notices were served on 1st January, 1972. The petitioners applied for certified copies of the assessment orders on 11th January, 1972. They were asked to appear and receive the certified copies on 14th January, 1972. But the petitioners did not attend office to take delivery on 14th January, 1972. The copies were delivered to them on 1st February, 1972. The petitioners preferred three appeals before the Assistant Commissioner of Commercial Taxes on 28th February, 1972. The Assistant Commissioner rejected the appeals on the ground that they were filed beyond the period of limitation provided. Against the said order, the petitioners preferred appeals before the Tribunal which dismissed the appeals. Aggrieved by the order of the Tribunal, the petitioners have preferred these revision petitions.

2. The question is whether the Tribunal was right, on the facts and circumstances

of the case, in holding that the appeals were barred by time. The Tribunal was of the view that the bar of limitation for preferring appeals commenced from the date of service of the notice of demand, which was on 1st January, 1972 (vide para 8 of the order of the Tribunal). The Tribunal also incidentally stated that the petitioners were negligent in not appearing before the office on 14th January, 1972, to receive the certified copies as directed and, therefore, it was of the opinion that there was no cause for condonation of the delay.

3. In *Electro Mechanical Corporation v. State of Mysore* ([1974] 33 S.T.C. 551), this court has laid down that :

"It is only when a copy of the assessment order is served on the assessee that it can be said that he has notice of the assessment. Therefore, the period of limitation for preferring an appeal u/s 20 of the Act has to be computed from the date on which a copy of the assessment order recording the reasons for such assessment is served on the assessee and not from the date when only the notice in form 6 unaccompanied by the assessment order recording the reasons for such assessment is served on the assessee."

The rules framed under the Act have been amended in 1970. Amended rule 22(1) reads thus :

"If in any case the assessing authority determines the turnover at a figure different from that shown in a return submitted under the provisions of these rules, it shall record its reasons briefly in writing and shall furnish the assessee with a copy of such record ..."

It is clear from the above rule that it is mandatory that the assessment order shall be served on the assessee where the return filed by the dealer is not accepted and the turnover determined is at a figure different from that shown in the return submitted. The reason for the rule is quite obvious. If the return is accepted, there is no question of the assessee preferring an appeal. Where the return is not accepted, and the turnover is determined at a figure different from that shown in the return, obviously the assessee has a right of appeal and he must know the reasons for the order.

4. In the instant cases, the assessment orders recording the reasons were not served on the assessee, though there was an obligation on the assessing authority to serve the copies of the assessment orders. Therefore, the assessee was obliged to apply for the certified copies and they were asked to appear and take the certified copies. It was the duty of the assessing authority to send copies of the assessment orders to the assessee. Therefore the Tribunal was in error in holding that the period of limitation commenced from 1st January, 1972, the date of service of the demand notice. The period of limitation commenced on 1st February, 1972, when copies of the assessment orders were received by the petitioners. If that is the date which has to be reckoned, the appeals were within time. The Tribunal as also the Assistant Commissioner were in error in rejecting the appeals as barred by time.

5. Accordingly, these revision petitions are allowed, the order of the Tribunal is reversed and the matters are remitted to the Assistant Commissioner of Commercial Taxes, Mangalore, to register the appeals and dispose of the same in accordance with law.
6. The petitioners are entitled to their costs. Advocate's fee Rs. 100 one set.
7. Petitions allowed.