(1980) 07 KAR CK 0039

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 10 of 1976

B.C. Malliah APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 23-07-1980

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 A, 23 (1), 3 B (4)

Citation : (1981) 47 STC 190

Hon'ble Judges : M.K. Srinivasa Iyengar, J;M. Rama Jois, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; R.G. Devadhar, High Court Government Pleader, for the Respondent

Judgement

Rama Jois, J.—In this revision petition presented u/s 23(1) of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the Act), the following question of law arises for consideration :

"Whether the commencement of the proceedings u/s 12-A of the Act by the Commercial Tax Officer after he was divested of the power of the assessing authority in cases where the tax liability in any assessment year was Rs. 50,000 or more by virtue of an order issued by the Commissioner under sub-section (4) of section 3-B of the Act and vested in the Assistant Commissioner of Commercial Taxes, in such a case was valid ?"

2. The brief facts of the case are as follows : The assessee is an excise contractor at Belgaum for the period commencing from 1st July, 1969, to 30th June, 1970. The Commercial Tax Officer, II Circle, Belgaum, completed the assessment under the Act on 14th December, 1970. The taxable turnover was fixed at Rs. 5,98,000 rejecting the declared turnover at Rs. 4,03,740. Thereafter on 20th December, 1972, the Commissioner of Commercial Taxes, in exercise of his powers under sub-section (4) of section 3-B of the Act issued a general order under which the power to take proceedings for assessment under the Act where the tax liability in a year is Rs. 50,000 or more, was vested in the Assistant Commissioner of

Commercial Taxes, Dharwar, in respect of Dharwar, North Kanara and Belgaum Districts. Subsequent to the issue of the aforesaid order the Commercial Tax Officer issued a notice u/s 12-A of the Act on 3rd April, 1974, on the ground that it had come to his notice that the turnover of Rs. 37,20,083 of the assessee during the relevant period had escaped assessment while making the assessment order and the petitioner was called upon to show cause as to why the said escaped turnover should not be assessed and brought to tax under the Act. He was also asked to show cause as to why penalty should not be imposed. The petitioner objected to the notice. But the Commercial Tax Officer proceeded to pass final order on 26th September, 1974, determining the total taxable turnover at Rs. 43,18,073 and determined the balance tax liability at Rs. 1,85,095 and also imposed a penalty of equal amount. Aggrieved by the said order the petitioner preferred an appeal before the Deputy Commissioner of Commercial Taxes (Appeals), Belgaum. Before the Deputy Commissioner the main contention urged on behalf of the petitioner was that after the issue of the general order by the Commissioner u/s 3-B(4) of the Act on 20th December, 1972, conferring powers to take proceedings for assessment in all cases where the tax liability was Rs. 50,000 or more on the Assistant Commissioner, the Commercial Tax Officer had no jurisdiction to issue the notice u/s 12-A of the Act which he did only on 3rd April, 1974. He also contested the determination of the turnover on the ground that it was unsustainable. The Deputy Commissioner rejected the contention regarding the jurisdiction of the Commercial Tax Officer, but was of the view that sufficient opportunity had not been given to the petitioner and the assessment had been concluded without proper enquiry. Accordingly, he remanded the matter for fresh enquiry. The petitioner preferred second appeal before the Tribunal. The Tribunal accepted the contention of the petitioner regarding the absence of jurisdiction of the Commercial Tax Officer only to the extent of his passing the final order. But, the Tribunal held that the issue of notice u/s 12-A of the Act was valid. Aggrieved by the said order, the petitioner has presented this revision petition.

3. Sri K. Srinivasan, the learned counsel appearing for the petitioner, contended that after the issue of the order u/s 3-B(4) of the Act divesting the Commercial Tax Officer of the jurisdiction to take proceedings in all cases where the tax liability was Rs. 50,000 or more and vesting the same in the Assistant Commissioner of Commercial Taxes, the impugned proceedings u/s 12-A of the Act could not have been commenced by the Commercial Tax Officer and, therefore, the proceedings commenced in the present case were without jurisdiction.

4. In order to appreciate the above contention, it is necessary to set out sub-section (4) of section 3-B of the Act :

"(4)(a) The Commissioner may, by general or special order in writing, direct that the powers conferred on the Commercial Tax Officer by or under this Act, shall in respect of any specified case or classes of cases or any specified dealers or classes of dealers be exercised by the Assistant Commissioner.

(b) Where an order under clause (a) is issued, then for the purposes of any case or dealer in respect of which any such order applies, references in this Act or in any rule made thereunder to the Commercial Tax Officer or assessing authority shall be deemed to be references to the Assistant Commissioner.

Explanation. - In this section, the word ''case'' in relation to any dealer specified in any order or direction issued thereunder means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date and includes also all proceedings under this Act which may he commenced after the date of such order or direction in respect of any year."

Once an order is made under clause (a) by the Commissioner directing that the powers of the Commercial Tax Officer exercisable under the Act shall be exercised by the Assistant Commissioner in specified classes of cases, the references to the Commercial Tax Officer or assessing authority in all the provisions of the Act and decision rendered in such cases has to be read as references to the Assistant Commissioner of Commercial Taxes in view of clause (b). The explanation to the sub-section makes it clear that on and after issue of an order under sub-section (4), the reference to the word "case" used in clauses (a) and (b) of sub-section (4) shall apply to all proceedings under the Act, which might be commenced after the date of issue of such order including any matter which was pending on the date of issue of such order. In the present case on the date when the Commissioner issued an order u/s 3-B(4) of the Act, i.e., on 20th December, 1972, no proceeding was pending against the petitioner. The assessment had already been completed on 14th December, 1970. Therefore, in view of the specific provision contained in sub-section (4) read with explanation, on and after 20th December, 1972, for purposes of this case, the reference to the expression, "the assessing authority" has to be considered as referring only to the Assistant Commissioner of Commercial Taxes and he was the only person competent to initiate proceedings u/s 12-A of the Act. Therefore, the notice issued on 3rd April, 1974, by the Commercial Tax Officer was without jurisdiction. In our view, the Tribunal was right in coming to the conclusion that in view of the order of the Commissioner u/s 3-B(4) of the Act, the order passed by the Commercial Tax Officer was without jurisdiction, but, the Tribunal erred in holding that the commencement of proceedings u/s 12-A of the Act by the Commercial Tax Officer was valid, as at both points of time he had no jurisdiction.

5. Sri Devadhar, the learned counsel appearing for the respondent, however, tried to make out that the initiation of the proceedings by the Commercial Tax Officer should he considered as valid in view of the order made by this Court in B. C. Mallaiah & Co. v. Commercial Tax Officer, II Circle, Belgaum (Writ Petition No. 3165 of 1974 decided on 23rd July, 1974 (Karnataka High Court).). The said writ petition was presented by the petitioner immediately after the issue of the notice u/s 12-A of the Act by the Commercial Tax Officer. The only question

which was raised and decided in the said case was that there was no ground to initiate proceedings u/s 12-A of the Act. This contention was rejected holding as follows :

"This is not a case of mere change of opinion on the material which had been placed before the Commercial Tax Officer on an earlier occasion. In the circumstances, it has to be held that the Commercial Tax Officer had jurisdiction u/s 12-A of the Act to issue the notice."

The contention of Sri Devadhar is that in view of the judgment in the writ petition filed by the petitioner himself it should be held that the commencement of proceedings u/s 12-A of the Act by the Commercial Tax Officer was with jurisdiction. We are unable to agree. The question that the Commercial Tax Officer was not the competent authority to commence proceedings in view of the order issued by the Commissioner u/s 3-B(4) of the Act was not an issue in the said writ petition. The only question raised was that the requirement of section 12-A of the Act did not exist for the commencement of proceedings. That is not the same thing as want of jurisdiction. The question of competence of the Commercial Tax Officer to initiate proceedings goes to the root of the matter and this question was raised only before the Deputy Commissioner and thereafter before the Tribunal.

6. It is astonishing that even though the question of want of jurisdiction on the part of the Commercial Tax Officer after the issue of the order of the Commissioner u/s 3-B(4) of the Act was so patent and was specifically raised before the Deputy Commissioner of Commercial Taxes in the course of the appeal and even though at the relevant point of time it would have been possible for the Assistant Commissioner to commence proceedings afresh u/s 12-A of the Act, as at that point of time it was well within the period of limitation, the departmental officers did not take any action to retrace the steps and to have the proceeding initiated by the competent authority, and that too in a case where heavy stakes were involved. The failure of the officers in discharging their duty under the Act is patent in this case. However, we have no other alternative than to hold that the issue of notice to commence proceedings u/s 12-A of the Act by the Commercial Tax Officer on 3rd April, 1974, was without authority of law as he had no jurisdiction, either to commence or complete the proceedings. Accordingly, we make the following order :

(1) The revision petition is allowed;

(2) The order of the Karnataka Sales Tax Appellate Tribunal, Bangalore, dated 22nd October, 1975, in S.T.A. No. 298 of 1975 in so far as it upheld the commencement of proceedings u/s 12-A of the Act and remanded the matter to the Commercial Tax Officer with a direction to him to transfer the same to the Assistant Commissioner of Commercial Taxes, is set aside. Consequently, the assessment order dated 14th December, 1970, would stand.

7. Petition allowed.

