

(1985) 02 KAR CK 0036
In the Karnataka High Court
Case No : S.T.A. No. 1 of 1983

Busunur Industries

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 20-02-1985

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 21 (1), 22 A, 22 A (1), 22 A (2), 24

Citation : (1985) ILR (Kar) 1322 : (1986) 61 STC 123

Hon'ble Judges : N.R. Kudoor, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; S. Rajendra Babu, Government Advocate, for the Respondent

Judgement

Puttaswamy, J.—This appeal is by the assessee and is directed against the order dated 10th January, 1983, of the Commissioner of Commercial Taxes, Karnataka, Bangalore (Commissioner), in Case No. SMR.7/81-82 revising the order of the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore Division, Bangalore (DC), and restoring the order of the Commercial Tax Officer, Chitradurga (CTO).

2. For the calendar year 1973 which is also the assessment year, the assessee filed his return before the CTO under the Karnataka Sales Tax Act of 1957 (Karnataka Act 25 of 1957) (the Act), inter alia showing a turnover of Rs. 1,53,952.41 as purchase return of tamarind seeds. On an examination of that return, the CTO completed his assessment on 22nd April, 1975, bringing to tax the aforesaid sum of Rs. 1,53,952.41 u/s 6 of the Act. Against the said order of the CTO the petitioner filed an appeal in Appeal No. 77/75-76 before the DC, who by his order dated 23rd June, 1975, allowed the same and directed the deletion of levy of purchase tax on the aforesaid purchase turnover of Rs. 1,53,952.41 with which claim only we are concerned in this case. In allowing the said appeal of the assessee the DC relied on a Division Bench ruling of this Court in State v. B. Raghurama Shetty [1975] 35 STC 360.

3. On 19th August, 1975, the Commissioner who is conferred with the suo motu power of revision u/s 22-A of the Act, called for the records in the said appeal from the DC which were received by him on 21st August, 1975. On receipt of those records, they were placed before the Commissioner with an office note thereon to the effect that the matter be pursued after the Supreme Court renders its decision in the appeal filed by the State against the decision of this Court in State v. B. Raghurama Shetty [1975] 35 STC 360 and the same was approved by the Commissioner on 30th August, 1975. On 24th March, 1981, the Supreme Court allowed the appeal filed by the State in State of Karnataka Vs. B. Raghurama Shetty and Others, and reversed the decision of this Court.

4. On 27th May, 1981, the Commissioner issued a show cause notice to the assessee proposing to revise the order of the DC u/s 22-A of the Act for the detailed reasons stated therein, which was opposed by him on diverse grounds. On affording an opportunity of hearing to the assessee, the Commissioner by his order dated 10th January, 1983, has reversed the order of the DC and has restored the order of CTO. Hence, this appeal by the assessee u/s 24 of the Act.

5. Sri K. Srinivasan, learned counsel for the petitioner, strenuously contends that the suo motu revisional proceedings completed beyond the period of four years from the date of the order of DC within which period only such power could be exercised u/s 22-A(2) of the Act was barred by time, illegal and impermissible. Sri Srinivasan maintains that the earlier Division Bench ruling of this Court in S. Subba Rao v. Commissioner of Commercial Taxes in Mysore, Bangalore [1967] 19 STC 257 AP that interpreted the earlier provision was distinguishable and if not distinguishable being opposed to the express language of the provision calls for reconsideration by a larger bench of this Court.

6. Sri S. Rajendra Babu, learned Government Advocate appearing for the revenue, refuting the contention of Sri Srinivasan contends that the period of four years had to be reckoned from the day the Commissioner called for records and not from the day the order was actually made by him and the ratio in Subba Rao's case [1967] 19 STC 257 governs the question and that ruling followed by a Division Bench of the High Court of Gujarat in State of Gujarat v. Jamnagar Motor Stores [1974] 33 STC 353 does not call for reconsideration.

7. Section 21 of the Act, as originally enacted, conferred power of revision on the DC and the Commissioner. Section 21(1) of the Act conferred power of revision on the DC over the officers subordinate to him. Section 21(2) of the Act conferred power of revision on the Commissioner over his subordinates. Section 21(3) of the Act regulated the period of limitation within which the power of revision had to be exercised. The Karnataka Sales Tax (Amendment) Act of 1963 (Karnataka Act 9 of 1964) that introduced a number of amendments to the Act, with which we are not concerned in this case, by sections 16 and 18 of that Act, split up section 21 into two independent provisions. Section 16 of the amending Act substituted section 21 of the Act and conferred power of revision on the Deputy Commissioners and the Assistant Commissioners of the area. Section 18

of the amending Act inserted section 22-A conferring power of revision on the Commissioner. In *Mohamed Samiullah Vs. Commissioner of Commercial Taxes*, , a Full Bench of this Court noticing this legislative history and upholding the validity of section 22-A has held that section 21(2) of the original Act has been bodily lifted and enacted as section 22-A of the Act.

8. We will first ascertain the scope and ambit of section 22-A of the Act, without reference to the authorities but only keeping in view the progressive rule of construction of statutes that is now firmly established.

9. Section 22-A of the Act that is material reads thus :

"22-A. Revision by the Commissioner of orders prejudicial to revenue. - (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) The power under sub-section (1) shall be exercisable only within a period of four years from the date of the order sought to be revised was passed.

Explanation. - In computing the period of limitation for the purposes of sub-section (2), any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded."

But, here also we are primarily concerned with the question of limitation that is regulated by sub-section (2) of that section.

10. The power of revision conferred by the section is judicial and in any event quasi-judicial power. The section empowers the Commissioner to call for the records, examine them and then initiate proceedings in conformity with that provision which incorporates the principles of natural justice to revise or not to revise the order of his subordinate. Without calling for the records and examining them, the power of revision cannot at all be exercised. When once the Commissioner calls for the records for purposes of section 22-A of the Act, the one and the only way that can be understood and interpreted is that he has initiated the proceedings for revision u/s 22-A(1) of the Act. Section 22-A(2) of the Act does not stipulate that the power initiated by calling for the records should also be peremptorily completed within 4 years from the date of the order sought to be revised. All that the section requires is that the power of revision shall be exercisable within four years from the date of the order. If the power of revision can only be exercised only by calling for records and not in a vacuum, then the very first step of calling for records must be of necessity construed as falling within the meaning of the term "shall be exercisable". In many a case as

in the very case for a variety of good reasons, which cannot be catalogued and stated exhaustively, it will be impossible for the Commissioner to complete the proceedings within four years from the date of the order though he had initiated proceedings by calling for records within that period. We are of the view that on this construction of section 22-A which carries out the purposes and object of that provision, we cannot uphold the contention of Sri Srinivasan.

11. We will now turn to the authorities on the point.

12. In Subba Rao's case [1967] 19 STC 257 this Court was called upon to decide the validity of an order made by the Commissioner in revisional proceedings initiated by him in calling for records, issuing a show cause notice within the period of four years but completing the proceedings after 4 years u/s 21(2) of the Act as in the present case. In repelling a similar contention urged before a Division Bench of this Court consisting of Hegde and Honniah, JJ. (as their Lordships then were), speaking through Hegde, J., expressed thus :

"Is the exercise of that power merely means passing of an order which he thinks fit ? The power conferred on the Commissioner u/s 21(2) as could be gathered from its language includes three different facets, viz., (1) calling for the records mentioned therein, (2) examination of those records, and (3) passing such orders, with respect thereto as he thinks fit. The Commissioner begins to exercise his power u/s 21(2) as soon as he calls for the records in question and the exercise of that power comes to an end when he passes an order in respect thereto. All that section 21(3) says is that the power conferred u/s 21(2) is exercisable within four years from the date of the order of assessment that is proposed to be revised. As mentioned earlier, the exercise of the power u/s 21(2) commences as soon as the records mentioned therein are called for. If that act is done within the period mentioned in section 21(3), then no question of limitation arises. Mr. Srinivasan is not right in his contention that the powers of the Commissioner to call for the records, to examine them and to pass such orders as he thinks fit are three independent powers and all those powers should be exercised within the time fixed in section 21(3). They are all facets of one single power, namely, the power to revise and that power is exercisable within the time mentioned in section 21(3).

We are also unable to agree with Mr. Srinivasan that the power to call for records u/s 21(2) is not a part of the quasi-judicial power of the Commissioner to revise the orders of his subordinates. The power to call for records is part of the revisional power of the Commissioner.

The expression "shall be exercisable" found in section 21(3) refers to the commencement of the exercise of the power referred to, and not the completion of the exercise of that power. Like all periods of limitation, section 21(3) also refers to initiation of the proceedings and not its completion."

In this case the Court has ruled that the period of limitation of four years u/s 21(3) of the Act as it stood then, which corresponds to section 22-A(2) of the Act

should be reckoned from the date the records were called for and not from the date the order was made by the Commissioner (sic). We are of the view that this ruling is a direct authority on the very question urged before us and we are bound by the same.

13. We have carefully read the language of section 21(3) of the Act that is analogous to section 22-A(2) of the Act and the above ruling. We are of the view that the said ruling is in accord with the language of section 22-A(2) of the Act. We are of the view that the explanation added to section 22-A(2) of the Act to exclude the period occupied by injunctions and stay orders on which reliance is placed by Sri Srinivasan to urge as additional ground for reconsideration of Subba Rao's case [1967] 19 STC 257 does not shed any light on the construction of section 22-A(2) of the Act at all. We do not find any good ground to doubt the correctness of the ruling in Subba Rao's case [1967] 19 STC 257 and refer the same to a larger Bench.

14. In Jamnagar Motor Stores" case [1974] 33 STC 353 a Division Bench of the Gujarat High Court dealing with an analogous provision in the Bombay Sales Tax Act following the ruling of this Court in Subba Rao's case [1967] 19 STC 257 has taken a similar view. In N.V.S. Kadirvel Nadar Vs. The State of Madras, a Division Bench of the Madras High Court dealing with an analogous provision in the Madras Agricultural Income Tax Act has also taken a similar view. We are of the view that the Division Bench ruling of this Court in K. G. Subramanya v. T. V. Reddi, Commissioner of Agricultural Income Tax (1969) 1 M LJ 274 interpreting the provisions of the Karnataka Agricultural Income Tax Act as it then stood cannot be understood as laying down a different proposition than the one expressed by the High Court of N.V.S. Kadirvel Nadar Vs. The State of Madras, . We are in respectful agreement with the views expressed by their Lordships of the Gujarat and Madras High Courts in Jamnagar Motor Stores [1974] 33 STC 353 and N.V.S. Kadirvel Nadar Vs. The State of Madras, cases respectively.

15. On the foregoing discussion, we hold that there is no merit in this contention of Sri Srinivasan and we reject the same.

16. Sri Srinivasan next contends that unless the records are called for exercising the power of revision as in Subba Rao's case [1967] 19 STC 257 the mere calling for records for other purposes as in the present case, will not save limitation, even on the construction placed in that very case.

17. Sri Babu has produced the relevant records of the office of the Commissioner to justify that they were called for purposes of revision u/s 22-A of the Act.

18. We have perused the records of the office of the Commissioner produced before us which show that on 19th August, 1975, the Commissioner had called for the records of the DC only for purposes of revision. When that is so, there is hardly any ground to examine the legal contention of Sri Srinivasan in this case. We, therefore, reject this challenge of the petitioner without expressing any opinion on the legal contention.

19. In revising the order made by the DC, the Commissioner followed the ruling of the Supreme Court in *State of Karnataka Vs. B. Raghurama Shetty and Others*, , which reversed the decision of this Court relied on by the DC to allow the appeal of the assessee. Sri Srinivasan, in our opinion, very rightly did not challenge the decision of the Commissioner on merits. We cannot, therefore, take exception to the order of the Commissioner.

20. As the only contention urged for the assessee fails, this appeal is liable to be dismissed. We, therefore, dismiss this appeal. But, in the circumstances of the case, we direct the parties to bear their own costs.