(1970) 07 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 5855 of 1969

Ganesh Traders APPELLANT

Vs

State of Mysore and Another RESPONDENT

Date of Decision : 13-07-1970

Acts Referred:

Mysore Sales Tax Rules, 1948 — Rule 38

Citation : (1971) 28 STC 145

Hon'ble Judges : G.K. Govinda Bhat, J;B. Venkataswami, J

Bench : Division Bench

Advocate : S. Varadaraja Thirumale, for S.G. Sundara Swamy, for the Appellant; P.K. Shyamsundar, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, J.—The petitioner is a firm carrying on business, inter alia, in coriander. For the period 1st April, 1968, to 31st March, 1969, the petitioner in his return of turnover under the Mysore Sales Tax Act, 1957, claimed exemption on the turnover of Rs. 56,875.27 relating to coriander on the ground that coriander comes within the term "other oil-seeds" as explained in serial No. 5(d) of the Fourth Schedule of the Act, and that the petitioner is not the first purchaser of the said goods. No assessment was made on the return filed by the petitioner for the period 1st April, 1968, to 31st March, 1969. On 22nd September, 1969, the second respondent issued a notice, marked annexure ''I'', purporting to be a notice under rule 38 of the Mysore Sales Tax Rules, 1957, demanding payment of tax at 3 per cent. on the aforesaid turnover of Rs. 56,875.27 holding that coriander is not entitled to exemption. Rule 38 of the Rules could have no application to the facts of the case when no assessment order was made, and the question of rectification of an order does not arise. Therefore, the impugned notice is clearly without jurisdiction. Consequently, it is hereby quashed. No costs.

2. Petition allowed.