(1974) 08 KAR CK 0018

In the Karnataka High Court

Case No : S.T.R.P. No. 2 of 1974

H.R. Jayadeva — APPELLANT

Vs

Assistant Commercial Tax Officer, Hospet — RESPONDENT

Date of Decision : 06-08-1974

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 32

Citation : (1975) 36 STC 222

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

Bench : Division Bench

Advocate : M.R. Achar, for the Appellant; H.N. Narayan, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, C.J.—This revision petition is directed against the order made by the First Class Magistrate, Hospet, in M.C. No. 53 of 1973.

2. The Assistant Commercial Tax Officer, Hospet, instituted proceedings before the First Class Magistrate, Hospet, for recovery of Rs. 739.30 from the petitioner. The petitioner preferred his objections contending that he separated from his father 8 years back, that no assets, either movable or immovable, belonging to his deceased father came to him and further that his father H. Rudraiah, who was carrying on the business has left other legal representatives also. Without going into the merits of the contentions urged, the Magistrate held that these contentions cannot be considered as the assessment has become final and he relied on section 32 of the Karnataka Sales Tax Act, 1957. That section has nothing to do with the contentions urged by the petitioner.

3. It is not clear from the order of the Magistrate or the papers placed before us whether the assessment was made on the petitioner or his father. Even if the assessment was made on the petitioner, it is open to the petitioner to contend that no assets of his father have come into his possession. This court has taken the view that only one of the several legal representatives, where the deceased dealer leaves more than one legal representative, cannot be proceeded against

and that proceedings for recovery should be instituted against all the legal representatives who inherit the estate of the deceased dealer. If the assessment had been made on the father of the petitioner when he was alive, before instituting the proceedings for recovery, it was the duty of the respondent to have ascertained as to who are the legal representatives of the deceased and whether they have come into possession of any of the assets of the decreased. It is only where the legal representatives have succeeded to the assets of the father to the extent of the assets of the deceased in their hands, they are liable. This court in Seshayya v. Assistant Commercial Tax officer [(1971] 28 S.T.C. 306 : 1971 Kar. L.J. 6.), has laid down the law as to what should be done when proceedings for recovery have to be instituted after the death of the assessee.

4. In the above view, the order of the Magistrate cannot be sustained.

5. We, accordingly, set aside the order of the Magistrate and direct him to consider the merits of both the contentions raised by the petitioner. The petitioner is entitled to his costs. Advocate''s fee Rs. 100.

6. Ordered accordingly.

