

**(1990) 09 KAR CK 0034**  
**In the Karnataka High Court**  
**Case No : S.T.A. No. 21/1984**

H.V. Subraya Setty and Sons

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 19-09-1990

**Acts Referred:**

Karnataka Sales Tax Act, 1957 — Section 22a

**Citation :** (1991) 35 KarLJ 44

**Hon'ble Judges :** K. B. Navadgi, J;M. P. Chandrakantaraj Urs, J

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**Judgement**

Chandrakantaraj Urs, J.-This Sales tax appeal is directed against the order dated 30-12-1983 as at Annexure-E.

2. Exercising the suo-motu powers of revision under Section 22-A of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the Act), the Commissioner of Commercial Taxes, Karnataka, Bangalore, respondent herein called upon the Appellant assessee to show cause why the orders of the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore, dated 13th September 1979 made in Appeal No. KST/AP/HN-12/79-80 as at Annexure-B should not be set aside inter-alia on the ground that the appeal had been allowed without there being sufficient cause shown though he proceeded to make an assumption that the assessing authority had resorted to best judgment assessment under sub-section (3) of Section 12 of the Act for misclassification of goods in the accounts books produced in support of the turn-over returned.

3. The facts themselves are not in dispute. Assessee returned a taxable turn-over for the assessment year from 1-7-1977 to 30-6-1978 in a sum of Rs. 5,22,347-34. On examination of the books of accounts, the assessing authority found that certain purchase of tyres and tubes from Madras had not been included as taxable turnover in the sales. Similarly he found that the books of accounts disclosed collection of sales tax on certain items while in respect of other items no sales tax had been collected though sales tax was liable to be collected on all such sales. He further found that the assessee had deducted the

sales from the opening stock. Therefore, the turn-over of sales shown was less the opening stock which he found to be incorrect and not depicting the true state of affairs of trading in the relevant assessment year. Therefore he proposed to enhance the turn-over returned on best judgment basis by adding ten percent gross profit on all such sales or purchases in which four per cent was leviable as tax and 15 percent on other taxable purchases.

4. We do not find those grounds to be insufficient to reject the books of accounts as not properly maintained in accordance with the Rules, reflecting truly and faithfully the trade transactions of the assessee.

5. On appeal, the Deputy Commissioner found fault with the assessing authority on an assumption there was misclassification of goods and came to allow the appeal. Though it was stated, the appeal was allowed in part the effect of the order as at Annexure-B was that the appeal came to be allowed fully. In other words, though the books of accounts did not reflect truly and faithfully the turn-over of the assessee, yet the appellate authority directed the same to be accepted as the proper books of accounts or to put it in other words, the turn-over disclosed in the prescribed form was directed to be accepted even with reference to the books of accounts which were found fault with by the assessing authority.

6. It was found in Revision by the Commissioner, invoking his jurisdiction, that the same was prejudicial to the Revenue as is borne out from the records. We are unable to find fault with the Commissioner invoking his jurisdiction, but we do find fault with the Commissioner in the reasoning adopted by him and ultimately the directions he gave. He set aside both the orders of the assessing authority as well as the appellate authority, that could not have been done.

7. The matter is well settled, once the assessment order is modified by the appellate authority, then the assessment order gets merged in the appellate order wholly and has no independent existence. If the appellate authority's order is set aside, then of course the assessing authority's order automatically gets revived. Therefore, the Commissioner cannot have jurisdiction to set aside the order of the assessing authority which had merged in the order of the appellate authority. To that extent, the order is liable to be set aside by us without any further discussion.

8. But we find that there are certain observations made by the Commissioner relating to how the assessing authority should have proceeded to make a best judgment assessment. That is not part of the jurisdiction which he exercises in suo-motu revision. His jurisdiction should be confined to the correction of any error committed by the appellate authority and no more. In that view of the matter, we set aside the order of the Commissioner and remit the matter back to him to pass a fresh order in the light of the observations we have made.

9. Therefore, we remit the matter back to the respondent with a direction to pass a fresh order keeping in mind the observations of this Court.

10. We also must notice the submission made from the bar that pursuant to the order now set aside by us, a fresh assessment has been made by the assessing authority, the effect of setting aside the order of the Commissioner is that no proper fresh assessment has taken place. Any assessment which now stands concluded is the result of the direction given in the revisional order of Respondent-Commissioner. Until and unless the Commissioner interferes with that order which we have set aside technically restoring the appellate orders on the remand made by us, is the only assessment order which stands subject to the orders in revision yet to be made.

11. With this clarification this appeal is allowed to the extent indicated and the matter remitted to the respondent for disposal.

Appeal allowed.