(1990) 12 KAR CK 0021

In the Karnataka High Court

Case No : STA No. 19-21/1986

Jayaram Metal Industries APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 21-12-1990

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22A

Citation : (1991) 35 KarLJ 35

Hon'ble Judges : M. Ramakrishna, J;M. P. Chandrakantaraj Urs, J

Judgement

1. These appeals are by the assessee, a registered dealer under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the ''Act'') directed against the common order dated 20th January, 1986 passed by the Commissioner of Commercial Taxes in Karnataka, Bangalore, in the exercise of his jurisdiction under Section 22-A of the Act.

2. The assessee is assessed by the Commercial tax Officer, III Circle, Bangalore-City. The said officer concluded the assessments for the years 1971-72 and 1972-73 and 1973-74 under Section 12(3) of the Act determining the gross turn-over and net turn-over-After rejecting the declared turn-over returned by the assessee for the said assessment years. For the assessment year 1971-72, the assessee declared Rs. 1,13, 413.30 against a gross turn-over of Rs. 5,67,638.30. The assessee had determined the net taxable turn-over at Rs. 1,13,413.30. The Assessing authority determined the same at Rs. 1,45,243.30. for the year 1972-73, the assessee declared a net taxable turn-over at Rs. 2,45,017.63. The Assessing Authority determined the same at Rs. 2,43,207.11. For the year 1973-74 the assessee declared a net taxable turnover at Rs. 2,52,752.68. The assessing Authority determined the same for that year the net taxable turn-over at Rs. 3,21,836.00. Initially the assessment was concluded for the year 1971-72 on 14-5-1973; for the year 1972-73 on 29-5-1976 and for the year 1973-74 on 29th June, 1976. However, subsequently for the relevant three years, the Assessing Authority reopened the assessments and assessed certain turn-overs which had escaped assessments-which came to his knowledge by the report

submitted by the Commercial Tax Officer (Intelligence) II, Bangalore. The said report is dated 22-9-1976. Similarly, relying on the information contained in the letter dated 22-2-1974 of the Superintendent of Central Excise, Headquarters, preventive, Bangalore for re-opening the assessments, the Assessing Authority passed orders bringing to tax the escaped turn-over on the basis of the information received by him for the years 1971-72 and 1973-74. He dropped the proceedings for the year 1972-73 in as much as before he could conclude the assessment for that assessment year and bringing to tax the escaped turn-over, the Appellate Authority, viz., the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore City, Bangalore, by his order dated 19-7-1978, had allowed the appeal filed by the assessee for the year-1972-73. The fresh assessment bringing to tax the escaped turn-over for the year 1971-72 was concluded on 24-4-1978 and for the year 1973-74 was concluded on 4-7-1979. Aggrieved by the two orders for the years 1971-72 and 1973-74, the appellant filed the appeals to the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore City, Bangalore in AP No. 215/1978-79 and AP No. 375/1979-80. The two appeals came to be disposed of, as noticed earlier, for the year 1972-73 on 19-7-1978 and for the year 1973-74 on 6-10-1979. Both the appeals came to be allowed and the assessment orders bringing to tax the escaped turn-over was-set aside as well as the penalty imposed under Section 12-A of the Act on the ground that the so-called escaped turn-over in the relevant assessment years was based on the surmise of the Assessing Authority and not on any reliable material.

3. The Commissioner of Commercial Taxes in Karnataka, Bangalore examined the orders of the assessing Authority as well as the Appellate Authority in the case of the assessee and on such consideration came to the conclusion that the appellate orders for the year 1971-72 and 1973-74 as well as the order under Section 12-A of the Act for the year 1972-73 were erroneous and therefore in exercise of his suo motu revisional jurisdiction under Section 22-A of the Act issued composite notice dated 18-5-1985 calling upon the assessee to show cause why the appellate orders for the assessment year 1971-72 and 1973-74 and the order of the Assessing Authority under Section 12-A of the Act for the assessment year 1972-73 should not be set aside for the reasons given in the show cause notice. Though the notices were served, the assessee was absent on 10-6-1985 the first date fixed for hearing the assessee. On a request made by him the cases came to be adjourned from time to time. However, on 26-8-1985, the assessee filed objections through one of its partners, as such, further opportunity was given for oral hearing by reporting the case for that purpose on 7-10-1985 and 2-12-1985. But the respondent-assessee did not appear on those dates. Therefore, considering the objections filed vide the letter dated 19-8-1985 the Commissioner proceeded to pass an order holding that there was ample material before the Assessing Authority in the form of the report from the Commercial Tax Officer (Intelligence), Bangalore, as well as the information furnished by the Superintendent of Central Excise, Head-quarters, Preventive-Bangalore to re-

open the assessment under Section 12-A of the Act and for the reasons recorded by him, passed the impugned order dated 20-1-1986 as at Annexure ''A'', the operative-portion of which reads as follows:

"I set aside (1) the appeal order dated 19th June, 1978 and the orders under Section 12-A and 12-A (1-A) relating to the year 71-72, (2) the assessment order dated 29-5-1976 for the period 72-73 and the order dated 30-4-1979 dropping the proceedings under Section 12-A relating to the year 1972-73 and (3) the appeal order dated 6-10-1979 and the orders under Section 12-A and 12-A(1-A) relating to the year 1973-74 and the case is remanded to the Assessing Authority -for passing fresh disposal in accordance with the law, keeping in view the reports of the Commercial Tax Officer, (Int.)-II, Bangalore and also the report of Superintendent-of Central Excise, Head-quarters, preventive, Bangalore."

In that circumstance, the assessee-firm has preferred the Sales Tax Appeals as noticed earlier inter alia on the ground that the respondent-Commissioner of Commercial Taxes had no jurisdiction in as much as on the relevant date for initiating proceedings against the appellate order for the year 1971-72 was on 19-7-1978 and for the year 1973-74 was on 30-4-1979 and as such, the proceedings initiated were beyond the time specified under Section 22-A of the Act and as such barred by limitation resulting in want of jurisdiction. Similarly, for 1972-73 it has been contended that the order of assessment was dated 29-5-1976 and the dropping of the assessments for the year 1978 was no order at all and as such considering that order dropping further proceedings under Section 12-A of the Act by the Assessing Authority which was no order at all under the provisions of the Act, the Commissioner had assumed jurisdiction-where he had none. It has been further contended that the Commissioner had no jurisdiction to revise the orders of the Commercial Tax Officer for the year 1971-72 and 1973-74. The said orders having merged with the orders of the Deputy Commissioner of Commercial Taxes. As a limb of the last contention, it was urged that even if this Court were to come to the conclusion, it was an order passed under the Act, the Commissioner could not have set aside the original order of assessment in respect of the assessment year 1972-73.

4. It is in the light of these contentions and the contentions advanced for the Revenue that we have to dispose of these appeals having regard to the decided cases cited at the Bar on both sides.

5. It will be convenient to take the first argument of Mr. K. Srinivasan, learned Counsel for the petitioner, founded on the plea of the jurisdiction of the Commissioner having been barred on account of lapse of time.

The relevant material dates for consideration would be as follows:

For the assessment year 1971-72 escaped turn-over was brought to tax by order dated 24-4-1978;

For the year 1972-73, proceedings were dropped by an order dated 30-4-1979;

For the year 1973-74, the escaped turn-over brought to tax by assessment order dated 6-10-1979.

5. Under Section 22-A of the Act, at the relevant time, the period prescribed for exercising jurisdiction was four years. The composite show cause notice came to be issued on 18-5-1985. However, the assessment records for the assessment year 1973-74 had been called for on 14-3-1980 and for assessment year 1971-72 and 1972-73 records were called for on 21-5-1982.

Therefore, as decided by this Court, the relevant date to compute the commencement of the period of limitation being the date on which the records were called for, the Commissioner of Commercial Taxes in Karnataka was correct - in holding that the objection taken on the- ground of the proceedings being initiated beyond the prescribed time, was without substance and, was correctly rejected. Therefore, we must also reject the argument advanced by Mr. Srinivasan. See Subba Rao v Commissioner of Commercial Taxes-19 STC 257.

6. In so far as 1972-73 is concerned, Mr. Srinivasan has urged that order passed dropping the proceedings on 30-4-1979 was no order contemplated under the Act and it cannot be treated as an assessment order and therefore, the original assessment concluded for the year 1972-73 on 29-5-1976 was the relevant date and therefore calling for the records on 21-5-1982 was clearly beyond the period of five years prescribed. If we hold that, the order dropping the proceedings is not an order contemplated under Section 22-A, Mr. Srinivasan would be right.

Section 22-A reads as follows:

"22-A. Revision by the Commissioner or the Joint Commissioner of orders prejudicial to revenue.- (1)

The Commissioner or the joint 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 asses- see 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.

7. As may be seen from the language employed, it does not refer to an assessment order as such. It refers to any order passed by any of the officers

subordinate to the Commissioner that is erroneous and which is prejudicial to the Revenue would allow the Commissioner to exercise the jurisdiction vested in him by the Section. Once assessment concluded for the year 1972-73 was re-opened under Section 12(3), then the original assessment order became a nullity and non-existent in law. Therefore, there was no order which would have the effect of reviving that order except when such order merges itself in an appellate order or by the commencement of proceedings under Section 12(3) of the Act to bring to tax the escaped turn-over. Therefore, merely because there was an adverse order by the appellate authority for the assessment year 1971-72, which guided the Assessing Authority to drop the proceedings as he did, would not only constitute an error, in that he did not apply his mind independently to the facts of the case for bringing to tax the escaped turn-over for that assessment year, but mechanically followed what the appellate authority had done. In fact the appellate order in our view would be a nullity because once the original assessment order became non cast, by virtue of proceedings under Section 12(3) of the Act, there was no appealable assessment order yet. Therefore, such an order was not only arbitrary and therefore illegal and erroneous, but also prejudicial to the revenue and as such, even on that ground, the argument of Mr. Srinivasan must fail and we should have no hesitation to hold that even an order dropping proceedings should be considered to be revisable order of the Commercial Tax Officer under Section 12(3) for the year 1971-72 and 1973-74 as those orders had merged with the order of the Deputy Commissioner of Commercial Taxes (Appeals).

8. The thrust of the argument is once the order under appeal is disposed of by an appellate order, the doctrine of merger applies and therefore, what is at large is only the appellate order and not the original order. That we have pointed out would not be correct. It is true, in the operative portion of the impugned order of the Commissioner, it is stated at (2) that the assessment order dated 29-5-1976 for the period 1972-73 is also set aside. That, in our opinion, was only consequential to the setting aside of the appellate order dated 6-10-1979 by which the order relating to the year 1971-72 came to be revived and the later order passed on 24-4-1978 had become non est. Therefore, we cannot find fault with the Commissioner for including the order relating to 1971-72 assessment year by which assessment had been concluded as far back as 29-5-1976 but had been reopened thereafter. As held by this Court pendency of an appeal is not a bar for reopening of the Assessment under Section 12(3) of the Act. See Commissioner of Income Tax v H.A.L.-1986 ILR Karnataka 1.

9. It was next urged by Mr. Srinivasan that the Commissioner could not have remanded the matter revised by him as no such power may be read into the corrective jurisdiction under Section 22-A of the Act. We do not think we should pay serious attention to the argument regard being had to the plain language employed in the conferment of power on the Commissioner under Section 22-A of the Act. He may not only modify and cancel assessment, but also give direction for fresh assessment. In that circumstance, it cannot be said that the

power to give direction docs not include the power to direct fresh assessment in the light of the observations made by the Commissioner in the course of his order.

10. We have not adverted to all the citations before us. We do not think that would have any relevance to the points raised by the Counsel and answered by us in the course of our order.

For the reasons given by us, we dismiss the appeals.

In the circumstances of the case, there will be no order as to costs.

Appeals dismissed.

