(1962) 07 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No''s. 555, 556 and 574 of 1962

Krishnasa APPELLANT

Vs

Commercial Tax Officer, Dharwar-III, Dharwar and Another RESPONDENT

Date of Decision : 26-07-1962

Acts Referred:

Constitution of India, 1950 — Article 226
States Reorganisation Act, 1956 — Section 122, 2 (h)

Citation : (1962) ILR (Kar) 609 : (1962) 13 STC 940

Hon'ble Judges : K.S. Hegde, J;Ahmed Ali Khan, J

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; D.M. Chandrasekhar, High Court Government Pleader, for the Respondent

Judgement

Hegde, J.—These are connected petitions. They are filed by the same assessee. W.P. 555/62 relates to the sales tax levied for the assessment year 1956-57, W.P. 556/62 relates to the sales tax levied for the period commencing from 1st April, 1957, and ending with 30th September, 1957. W.P. 574/62 relates to the sales tax levied for the assessment year 1955-56.

2. In these petitions under Article 226 of the Constitution, the assesses-petitioner has prayed that we may be pleased to quash the orders passed by the Commercial Tax Officer, Dharwar. As against the orders passed by the said Commercial Tax Officer, he has not gone up in appeal to the authorities constituted under the Bombay Sales Tax Act. Till 1st October, 1957, the Bombay area of the Mysore State was governed, in the matter of sales tax, by the provisions of the Bombay Sales Tax Act, 1953. A uniform sales tax law in the new Mysore State was introduced for the first time on 1st October, 1957. The impugned assessments were made only after the 1957 Act came into force; but all of them were made under the Bombay Sales Tax Act, 1953.

3. In these petitions, the learned counsel for the petitioner has raised three contentions. They are : (1) the Commercial Tax Officer, Dharwar, had no

jurisdiction to levy any tax on the petitioner; (2) by the time the assessments were made, the period within which they had to be made, had elapsed; and (3) the Government notification taking away the right of the assessees to file appeals to the Sales Tax Appellate Tribunal is an invalid notification. We shall now proceed to consider each one of the contentions advanced on behalf of the petitioner.

4. It is convenient to take up the last contention first. The petitioner cannot be said to have been aggrieved by the notification of the Government removing the right of the assessees to file appeals to the Sales Tax Appellate Tribunal. As mentioned earlier, the petitioner did not go up in appeal against the order of the Commercial Tax Officer. Before going to the Tribunal he had to go up in appeal to the Deputy Commissioner and it is not his case that that right had been taken away. The question of going up in appeal to the Tribunal would have arisen only if the petitioner had gone up in appeal to the Deputy Commissioner of Commercial Taxes in the first instance. Therefore, there is no substance in the contention that the petitioner had been aggrieved by the notification of the Government removing the right of appeal to the Sales Tax Appellate Tribunal.

5. There is no force in the second contention of Sri Katageri, the learned counsel for the petitioner, that the right to levy sales tax had been barred. This contention does not appear to have been taken before the Commercial Tax Officer. Further, if there was any substance in that contention, the assessee should have gone up in appeal to the authorities constituted under the sales tax laws. That contention cannot be made a ground in an application under Article 226 of the Constitution.

6. This leaves us with the question as to whether the Commercial Tax Officer, Dharwar, had jurisdiction to make the impugned assessments. u/s 14 of the Bombay Sales Tax Act, 1953, to be hereinafter referred to as "the Act", the power to levy sales tax was conferred on the Collector of Sales Tax. But u/s 44 of the Act, the Collector was authorised to delegate his powers to officers subordinate to him under such conditions and restrictions as the State Government may, by general or special order, impose. As per Notification No. 423 dated 18th May, 1953, the Collector delegated his power u/s 14 to the Additional Assistant Collectors of Sales Tax and to all Sales Tax Officers. By virtue of this notification, assessments u/s 14 of the Act were used to be made by the Sales Tax Officers. Thus far, there is no dispute. After the coming into force of the States Reorganisation Act on 1st November, 1956, the Mysore Government issued u/s 122 of the States Reorganisation Act, Notification No. 11094/ LR.96-56-1 dated 1st November, 1956, authorising the Commissioner of Excise and Commercial Taxes for the State of Mysore to discharge the functions of the Collector under the Act. After the Mysore Sales Tax Act, 1957, came into force, as per Notification No. RD10/STL58-2 dated 19th February, 1958, the functions of the Sales Tax Officers under the Act are required to be performed by the Commercial Tax Officers.

7. Sri Katageri''s contention is that any delegation made by the Collector under the Act does not enure to the benefit of the Commissioner appointed by the Mysore Government after the States Reorganisation Act. This contention overlooks the provisions of section 119 of the States Reorganisation Act, which says :-

"The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day."

8. The definition of "law" in section 2(h) of the States Reorganisation Act includes "notification" also. In view of these provisions, the notification issued by the Collector of Bombay on 18th May, 1953, continues in force till the same is either modified or replaced by any further notification. It is not the case of Sri Katageri that that notification had at any time been replaced by any other notification or that the same had been repealed. Therefore, there is no substance in the contention of Sri Katageri that the power delegated to the Sales Tax Officer had lapsed on the coming into force of the States Reorganisation Act. There is also no substance in the contention of Sri Katageri that the Commercial Tax Officers who replaced the Sales Tax Officers (which is merely a change in the name) under the 1957 Act, did not get any jurisdiction to function u/s 14 of the Act.

9. There is no doubt that these petitions are wholly misconceived. They are dismissed with costs. Advocate''s fee Rs. 100, one set.

10. Petitions dismissed.

