(1968) 10 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 1469 of 1966

Lakshmi Bags Manufacturing Co. APPELLANT

Vs

State of Mysore and Others RESPONDENT

Date of Decision : 25-10-1968

Acts Referred:

Constitution of India, 1950 — Article 14
Mysore Sales Tax Act, 1957 — Section 12 A, 22, 22 A

Citation : AIR 1969 Kar 295 : (1969) ILR (Kar) 133 : (1969) 1 MysLJ 425

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Judgement

Somnath Iyer, J.—We are concerned in this writ petition with the validity of an order made by the Deputy Commissioner of Commercial Taxes assessing the escaped turnover of the petitioner u/s 12-A of the Mysore Sales Tax Act, 1957. The assessment year was 1960-61 and the assessment had been made by the concerned Commercial Tax Officer. The Deputy Commissioner of Commercial Taxes who was of the opinion that some part of the turnover of the petitioner had escaped assessment made the impugned order, and there is more than one challenge made to it in this writ petition.

2. The first is that u/s 12-A, the Deputy Commissioner could exercise the power created by it only when he is dealing with a pending appeal which is before him. The second is that the provisions of Section 12-A which authorise indiscriminate exercise of power by more than one authority are unconstitutional.

3. The contention that the Deputy Commissioner could exercise power under S. 12-A only in a pending appeal can no longer stand scrutiny by reason of the pronouncement of the Supreme Court in State of Kerala Vs. Shri M. Appukutty, in which the elucidation made with respect to similar provisions occurring in the Madras General Sales Tax Act, was that the expression ''appellate authority'' referred to in those statutory provisions is merely descriptive and so excludes the concept of a pending appeal.

4. We think that there can be no answer to the argument that the provisions of that section are unconstitutional. It creates three authorities which could assess escaped turnover. The first is the Commercial Tax Officer, the second is the appellate authority who is normally the Deputy Commissioner and the third is the revising authority who is either the Commissioner of Commercial Taxes or the Deputy Commissioner.

5. Section 22 of the Act as it now stands is not what it was at the relevant point of time when the Deputy Commissioner made the impugned order on February 21, 1966. As the Act then stood Section 20 authorised a first appeal to the Deputy Commissioner from an order made by the Commercial Tax Officer and from an appellate order of the Deputy Commissioner a second appeal could be preferred to the Sales Tax Appellate Tribunal u/s 22 and, u/s 23 a revision petition could be presented to this court against the order made by the Tribunal.

6. Section 22-A of the Act as it then stood was another source of the Commissioner''s revisional power, and from an order made in the exercise of that power an appeal to this Court could be preferred u/s 24 but none be preferred u/s 24 but none from an order u/s 12-A.

7. If, instead of the Deputy Commissioner the Commercial Tax Officer had exercised power created by Section 12-A the petitioner could have preferred a first appeal to the Deputy Commissioner, a second appeal to the Sales Tax Appellate Tribunal and a revision petition to this Court. But under the Act as it then stood, from the order which the Deputy Commissioner made in the present case, there could be no appeal to anyone, and not even to the Sales Tax Appellate Tribunal, and so, no revision petition could be preferred to this Court u/s 23. The conferment of power on the Commissioner of Commercial Taxes, to revise an escaped assessment is also susceptible to the same criticism.

8. In Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, , the relevant provisions of the Taxation on Income (Investigation Commission) Act were declared void for the reason that, whereas in the case of an assessee who had concealed his income and had been proceeded against u/s 34 of the Indian Income Tax Act, he could have preferred an appeal to the Assistant Commissioner in which he could challenge the findings of fact recorded by the Income Tax Officer and would be further entitled to prefer an appeal to the Income Tax Appellate Tribunal, a person whose case was dealt with under the other Act had no such right.

9. The decision in Jagannath Prasad Sharma Vs. State of Uttar Pradesh and Others, on which Mr. Shantaraju depends rested on the provisions of two independent statutes and so cannot assist him.

10. While under the same statutory provisions which Section 12-A of the Mysore Sales Tax Act, 1957, incorporates, the case of a dealer whose turnover has escaped assessment could be picked up by the Commercial Tax Officer, the case of another dealer could be selected by the Deputy Commissioner or the

Commissioner of Commercial Taxes. The incongruous situation so produced is that the dealer selected by the Commercial Tax Officer would be entitled to prefer an appeal against findings of fact recorded by the Commercial Tax Officer and if he did not succeed in that appeal he could prefer a second appeal to the Sales Tax Appellate Tribunal u/s 22, and then, when a question of law is wrongly decided or not decided, he can present a revision petition to this Court u/s 23 of the Act. But one whom the Deputy Commissioner selects cannot.

11. So Section 12-A as it then stood clearly offended against Article 14 of the Constitution and was therefore void.

12. Section 22 which after its amendment by Act III of 1966, authorises an appeal from an order of the Deputy Commissioner u/s 12-A has no relevance to the impugned order which was made before its amendment.

13. In the view that we take, it is unnecessary for us to discuss the further criticism of section 12-A that it affords no intelligible guidance for the selection which it empowers.

14. So, we set aside the order made by the Deputy Commissioner. No costs.

15. Petition allowed.

