(1985) 01 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No. 3736 of 1976

Mohammed Samiullah APPELLANT

Vs

Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 23-01-1985

Acts Referred:
Constitution of India, 1950 — Article 14, 226
Karnataka Sales Tax Act, 1957 — Section 20, 22 A

Citation : (1986) 61 STC 121

Hon'ble Judges : S.R. Rajasekhara Murthy, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : B.P. Gandhi, for the Appellant; S. Rajendra Babu, Government Advocate, for the Respondent

Judgement

Puttaswamy, J.—In this petition under article 226 of the Constitution, the petitioner has challenged the show cause notice No. SMR.100/75-76 dated 12th March, 1976 (exhibit A), issued by the Commissioner of Commercial Taxes in Karnataka, Bangalore ("Commissioner"), u/s 22-A of the Karnataka Sales Tax Act, 1957 ("the Act"), proposing to revise an order dated 5th January, 1976, of the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore Division, Bangalore ("DC"), for the various reasons stated therein.

2. The petitioner has challenged the impugned notice principally on two grounds : (i) that section 22-A of the Act does not confer power of revision on the Commissioner to interfere with an appellate order made by the appellate authority u/s 20 of the Act and (ii) that if the construction placed by him on section 22-A of the Act did not find favour with the court, then that provision was violative of article 14 of the Constitution. On these grounds a Division Bench of this Court consisting of Srinivasa Iyengar and Rama Jois, JJ., referred the following questions of law for the opinion of a Full Bench :

"(i) Whether section 22-A of the Karnataka Sales Tax Act, 1957, confers power on the Commissioner to interfere with an order made by an appellate authority u/

s 20 of the Act ?

(ii) If the answer to the first question is in the affirmative, whether section 22-A of the Act is void as offending article 14 of the Constitution ?"

A Full Bench of this Court has furnished its opinion on 21st January, 1985 [Mohamed Samiullah v. Commissioner of Commercial Taxes [1986] 61 STC 107 (FB)], against the petitioner on both the questions. In this view, both the grounds urged by the petitioner are liable to be rejected. Sri B. P. Gandhi, the learned counsel for the petitioner, does not dispute this position. But, he still contends that the order made by the DC does not suffer from an error justify the Commissioner to revise the same u/s 22-A of the Act. In support of his contention Sri Gandhi strongly relies on a ruling of the Orissa High Court in State of Orissa v. Samsuddin Akbar Khan and Company [1975] 35 STC 179.

3. Sri S. Rajendra Babu, the learned Government Advocate appearing for the respondent, contends that before the Commissioner examines and decides the objections filed by the petitioner, there is no justification for this Court to interfere with the impugned show cause notice.

4. On the very terms of the show cause notice as also in law, it is open to the petitioner to urge before the Commissioner that the order made in his favour by the DC does not justify his interference u/s 22-A of the Act. Whether the ruling of the High Court of Orissa in Samsuddin Akbar Khan''s case [1975] 35 STC 179 has relevance or not has necessarily to be examined and decided by the Commissioner. But, before that there is no justification for this Court to interfere with the same, particularly when any adverse order to be made by the Commissioner is challengeable before this Court in an appeal. We are, therefore, of the view that this is not a fit case for our interference at this stage.

5. Sri Babu suggests that the petitioner or his counsel be directed to appear before the Commissioner on 16th February, 1985, and represent his case. Sri Gandhi who is representing the petitioner before the Commissioner has no objection to appear before him on 16th February, 1985, and argue his client''s case on merits. We consider it proper to issue appropriate directions in this behalf.

6. In the light of our above discussion, we make the following orders and directions :

(i) We dismiss this writ petition and discharge the rule issued in the case. But, this should not be understood by the Commissioner as this Court expressing its opinion on merits except on matters that are concluded by this order.

(ii) We direct the petitioner to appear before the Commissioner in person or through his counsel on 16th February, 1985, and take further orders from him for the further progress of the case.

7. The writ petition is disposed of in the above terms. But, in the circumstances

of the case, we direct the parties to bear their own costs.

8. Let this order be communicated to the respondent within 10 days from this day.

