(2000) 07 KAR CK 0078

In the Karnataka High Court

Case No : Sales Tax Appeal No. 11 of 2000

M/s. Balaji Friedgram Industries, Bangalore — APPELLANT

Vs

The Additional Commissioner of Commercial Taxes, Zone-ii, Bangalore and Others — RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 22A(3)

Citation : (2000) 49 KarLJ 101

Hon'ble Judges : V. G. Sabhahit, J;R. V. Raveendran, J

Judgement

R.V. Raveendran, J.-This appeal under Section 24 of the Karnataka Sales Tax Act, 1957 (for short, the ''Act'') is by the assessee, relating to the assessment year 1984-85.

2. The order of assessment in regard to said year was passed on 1-7-1991. Feeling aggrieved, the assessee filed an appeal before the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore City, Division II. The said appeal was allowed by the Appellate Authority by order dated 2-7-1992, granting certain reliefs. Thereafter, the Additional Commissioner of Commercial Taxes, Zone-II, Bangalore, purporting to exercise his powers of suo motu revision under Section 22-A(1) of the Act, issued show-cause notice dated 6-3-2000 and proposed to revise the said order. The appellant filed his objections on 21-3-2000, contending that the proceedings are barred by limitation. The Additional Commissioner has thereafter, by order dated 31-3-2000, set aside the order of First Appellate Authority and restored the order of Assessing Authority, both as to levy of tax and penalty under Section 12(4) of the Act. Against the said order this appeal has been filed.

3. Appellant contended that power has been wrongly exercised by the Additional Commissioner of Commercial Taxes, beyond the period of limitation. The order under appeal discloses that the Additional Commissioner of Commercial Taxes called for the records from the First Appellate Authority on 16-11-1996. Even if

the said date is taken as the date of exercise of power of suo motu revision instead of 6-3-2000, the date on which the show-cause notice was issued, it would be seen that power was exercised beyond the period of limitation prescribed. Section 22-A(3) of the Act provides that the Additional Commissioner shall not exercise any power under sub-sections (1) and/or (2) of Section 22-A, if more than four years expired after the passing of order. The First Appellate Authority passed the order on 2-7-1992 and the power of revision has been stated to have exercised on 16-11-1996 i.e., after four years from the date of passing the order. Hence, appellant is entitled to succeed in this appeal on the ground of limitation.

4. In view of above, it is unnecessary to examine the matter on merits.

5. In the result, this appeal is allowed and the order dated 31-3-2000 passed by the first respondent is set aside. As a consequence, the order of First Appellate Authority stands restored.

Sri G.K. Bhat, learned Government Pleader, is permitted to file memo of appearance for respondents in six weeks.