**(1998) 11 KAR CK 0043**

**In the Karnataka High Court**

**Case No :** Writ Petition Nos. 31745 to 31747 of 1998

M/s. Bharath Heavy Electricals Limited (Electronics Division), Bangalore — APPELLANT

Vs

The Additional Deputy Commissioner of Commercial Taxes (Assessments) 23, Bangalore — RESPONDENT

**Date of Decision :** 11-11-1998

**Acts Referred:**

Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 12A

**Citation :** (1999) 46 KarLJ 156

**Hon'ble Judges :** V. K. Singhal, J

## Judgement

1. By these petitions a prayer is made that the notice under Section 12-A of the Karnataka Sales Tax Act, 1979, be declared as barred by time. The dispute is in respect of the assessment years 1985-86, 1986-87 and 1987-88.

2. Learned Counsel for the respondent submitted that the objections regarding limitation could be raised before the Assessing Authority as was directed by this Court in the case of G.G. Gaikwad v Deputy Commissioner of Entry Tax, W.A. No. 19762 of 1996, DD: 16-7-1996.

3. Learned Counsel for the petitioner has relied on the judgment in the case of T.T. Private Limited v Income-tax Officer, Company Circle-III, Bangalore, (1980)121 ITR 551 (Kar.), where availability of alternative remedy was held not barring the jurisdiction of this Court. In this case a writ for quashing notice for reassessment under Section 148 of the Income-tax Act was filed. In another decision in the case of K. Venkatesh Naik v Income-tax Officer, (1993)202 ITR 575, also the jurisdiction of the authority was challenged and it was held that this Court is not precluded in examining the matter. The decision given in the case of M/s. Mysore Cements Limited, Bangalore v Deputy Commissioner of Commercial Taxes, (Assessment), V Circle, City Division II, Bangalore, 1994(38) Kar. L.J. 153, is also to the effect that alternate remedy if it is considered insufficient, there is no bar to exercise jurisdiction by this Court.

4. I have considered over the matter. The law with regard to jurisdiction of this Court under Article 226 of the Constitution of India is settled by Apex Court in series of decisions and when the matter is challenged on the ground of jurisdiction this Court can definitely examine the legality of the order passed. It has to be kept in view that the power under Article 226 of the Constitution cannot be exercised for making enquiry or where facts are disputed. The question whether the assessments are barred by limitation is a mixed question of law and fact. Under Section 12-A(2) of the Karnataka Sales Tax Act while computing the period of limitation for assessment of escaped turnover, the time during which an assessment has been deferred on account of the stay order granted by any Court or other authority or by reason of the fact that appeal or other proceeding is pending before the Appellate Tribunal or High Court or the Supreme Court is to be excluded.

5. It is settled law that if statutory remedy is provided under the taxation law, the assessee has to exhaust such remedy first (see C.A. Abraham v Income-tax Officer, Kottayam and Another, AIR 1961 SC 609, Thansingh Nathmal and Others v Superintendent of Taxes, Dhubri and Others, AIR 1964 SC 1419, State of Uttar Pradesh v Mohammad Nooh, (1958) SCR 598, The British India Steam Navigation Company Limited v Jasjit Singh, Additional Collector of Customs, Calcutta and Others, AIR 1964 SC 1451, Sales Tax Officer, Jodhpur and Another v Shiv Ratan G. Mohatta, 5 SCST 5621, Collector of Monghyr and Others v Keshav Prasad Goenka and Others, AIR 1962 SC 1694). The question even with regard to limitation could be examined by the Appellate Authority. In a case where long and elaborate enquiry is needed or evidence is required to be obtained by way of affidavit, it may not be sufficient.

6. Certain arguments were made from both sides which I do not consider proper to examine on merits because various facts must come on record on the basis of which it could be considered. A preliminary objection therefore could be raised by the assessee before the Assessing Authority that the proceedings are barred by limitation and all those factors which are necessary for the purpose of determination of the point of limitation could be considered by the Assessing Authority. In these circumstances, the assessee may file objections within four weeks from today and the Assessing Authority would pass orders regarding jurisdiction and on the point of limitation on the basis of the objections raised, after hearing the petitioner.

Petitions stand disposed of with the above observation.

 