(1994) 12 KAR CK 0017

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 24 of 1990

M/s. Hajee Abbe Kalandan and Sons, Mangalore APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 05-12-1994

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12(3)

Citation : (1999) 47 KarLJ 310

Hon'ble Judges : B. Padmaraj, J;S. Rajendra Babu, J

Judgement

S. Rajendra Babu, J.-This petition is directed against an order made by the Tribunal affirming an order of revision made in exercise of powers under Section 21 of the Karnataka Sales Tax Act, 1957 reversing an order made by the Appellate Authority.

2. The circumstances in which this case came up is as follows:

The petitioner is a dealer and a commission agent in dry fish, dry fish products, fish oil, cardamom and forest produce. He also exports fish oil and supplies fish manure. He filed certain returns and also annual return in Form 4 declaring gross and taxable turnovers. After verifying the books of account, the Commercial Tax Officer issued a pre-assessment notice calling upon the petitioner to show cause as to why he should not be assessed on varied gross and taxable turnovers. The petitioner in his reply disputed the turnovers proposed to be brought to tax by the Assessing Authority and he also stated that the trading, profit and loss account could not be produced as the audit of the accounts had not been completed and income-tax assessment for the relevant period is not completed. On the basis of certain information received from the Commercial Tax Officer, I Circle, Udupi, further notice was given to the petitioner stating that he had not produced the books of accounts for the years 1973-74 to verify as to whether fish oil and manure had been accounted for by him in the books of accounts. The petitioner filed his objections thereto disputing the additions sought to be made in the notice dated 12-6-1978 in regard to turnovers of fish oil. The petitioner stated that purchases were made from unregistered dealers, the transactions in question were recorded as cash purchases and that one of the partners had made certain false allegation, based on that information action is taken by the respondent. However, the Department secured the information that the petitioner had filed trading, profit and loss account and balance sheet for the assessment year 1973-74 before the III Income Tax Officer, Mangalore Circle, Mangalore, on 27-9-1976 itself. It is on the basis of these accounts certain inferences were drawn by the Authorities concerned. On that basis the assessments were concluded. The matter was carried in appeal. In the appeal, the order of assessments were set aside and the matter was remitted particularly on the ground that the petitioner had not been furnished with the source of information in the proposition notice and opportunity had not been given to him. After the order of remand certain books of accounts were produced on 13-2-1981 for verification and the petitioner also filed a consolidated statement of purchases and sales of fish oil, manure, dry fish and so on. Still he did not file the trading, profit and loss account and balance sheet for the relevant assessment year. The books of accounts were called for by the Commercial Tax Officer. The same was not complied with. Ultimately, the Commercial Tax Officer issued a proposition notice on 16-8-1985 calling upon the petitioner to show cause as to why he should not be assessed on gross and taxable turnovers mentioned therein. A reply was filed thereto. Thereafter, the assessment records came to be transferred by the C.T.O., II Circle, Mangalore to the A.C.C.T. (Assessment), Mangalore. The Assistant Commissioner heard the petitioner on 4-3-1986 and finalised the assessment for the assessment year 1973-74 on gross and taxable turnovers mentioned therein more or less accepting the contentions of the petitioner that the trading account was filed before the Income Tax Officer by one of the partners without the knowledge of the other partners inflating the taxable turnover of fish oil and fish manure to get higher bank credit and discount facilities and the turnovers in the trading account filed before the Income Tax Officer are not based on any documentary evidence like books of accounts, purchases, sale bills, Form 39, delivery notes and such other subsidiary accounts. Therefore, the Assistant Commissioner granted exemption in respect of the turnover relating to raw fish amounting to Rs. 28,38,585.51. In the result, he accepted the book results as could be gathered from the records. On examination of the assessment records, the Deputy Commissioner of Commercial Taxes (Administration), Mangalore, found that the petitioner had maintained two different sets of accounts, one for sales tax and another for the purpose of income-tax and the Assistant Commissioner should have assessed the petitioner on the basis of his trading, profit and loss account filed before the Income Tax Officer and after giving an opportunity of being heard to the petitioner he should have revised the assessment on gross and taxable turnovers. Against that order, appeal was preferred before the Tribunal. The Tribunal raised three questions for consideration, namely.-

(1) Whether the petitioner as justified in filing separate trading accounts to the

Income-tax and Sales Tax Departments in respect of the transactions effected during the relevant year?

(2) Whether the turnover of raw fish could have been substituted for turnover of fish oil and manure for any reason?

(3) Whether the suo motu revision petition was maintainable?

On all the questions, the Tribunal answered against the petitioner. The Tribunal examined the trading account filed before the Sales Tax Authority and also before the Income-tax Authority and came to an independent conclusion based on the material on record. The Tribunal is the last fact finding authority. It is open to it to accept one view or the other based on the relevant material. It cannot be said that the statements filed by the petitioner before the Income-tax Authority are irrelevant. In reaching the conclusion one way or the other, the last fact finding authority has taken that view and relied upon the material produced by the assessee before the Income Tax Officer. Whatever might have been its nature or authenticity, which is contested before us, we are of the view that it merely falls in the region of appreciation of evidence. In that background, we find that the view taken by the Tribunal is perfectly in order.

3. It is unnecessary for us to examine the other questions, as on the main question we are in agreement with the Tribunal. In that view of the matter there is no substance in this petition. Petition is therefore dismissed.