

(1998) 08 KAR CK 0064

In the Karnataka High Court

Case No : Sales Tax Appeal No. 89 of 1995

M/s. Satyanarayana Engineering Works, Davanagere

APPELLANT

Vs

Assistant Commissioner of Commercial Taxes, Davanagere
and Others

RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22A(1)

Citation : (1998) 45 KarLJ 566

Hon'ble Judges : S. R. Venkatesha Murthy, J;Ashok Bhan, J

Judgement

Ashok Bhan, J.-The only point canvassed before us is regarding limitation relating to initiation and termination of proceedings under Section 22-A of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the "Act"), therefore we will confine ourselves to the facts relating to the controversy raised before us.

2. The appellant is a registered dealer under the provisions of the Act and is borne on the file of the Sales Tax Authority. The return for the assessment year 1983-84 was filed claiming certain exemptions. Appellant produced its books of accounts maintained in the course of its business. According to the appellant, the articles manufactured by the appellant did not require any mechanical power. The implements could either be used manually or drawn by animals. The Assessing Authority being of the view that the above implements are not agricultural implements and that the implements are to be drawn only by tractor, disallowed the exemption claimed by the appellant. The order of assessment was framed on 31st October, 1986. Aggrieved by the order of Assessing Officer, appellant filed an appeal before the First Appellate Authority which was accepted on 12th of March, 1987.

3. The Additional Commissioner, in exercise of his suo motu revisional jurisdiction under Section 22-A of the Act, sent for the records of the First Appellate Authority on 8-6-1987 which were received in the Office of the Commissioner on 10-6-1987. The notice to the appellant was issued on 22-3-1994.

4. Section 22-A(1) and (3) which are relevant for determining the controversy between the parties are reproduced below:

22-A. Revisional powers of Additional Commissioner and Commissioner.-

(1) The Additional Commissioner may on his own motion call for and examine the record of any proceeding under Section 20 or Section 21 of this Act and if he considers that any order passed therein by any officer who is not above the rank of a Joint Commissioner, is erroneous insofar as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment or directing a fresh assessment.

(2).....

(3) The Additional Commissioner or the Commissioner shall not exercise any power under sub-section (1) or sub-section (2), as the case may be, if-

(a) the time for appeal against the order has not expired;

(b) the order has been made the subject-matter of an appeal under Section 22 or of a revision in the High Court; or (c) more than four years have expired after the passing of the order sought to be revised.

5. According to the Counsel for the appellant, the revisional authority could exercise its powers under Section 22-A within four years of the passing of the order by issuing a notice to the appellant. As the order passed by the First Appellate Authority was on 12th of March, 1987, the jurisdiction under Section 22-A could be exercised within four years from that date. As the notice at Annexure-C issued to the appellant is dated 22nd of March, 1994, the same was clearly beyond the period of limitation prescribed under the Act. As against this, Government Pleader appearing for the respondent has argued that powers under sub-section (3) provides that Commissioner shall not exercise any powers under sub-section (1) or sub-section (2) as the case may be, if more than four years have expired after the passing of the order sought to be revised. Powers under sub-sections (1) and (2) are initiated for due action by calling for examining the records of the proceedings under Section 20 or 21 and since the revisional authority sent for the records on 8th of June, 1987, that is within four years of the passing of the order, it apparently exercised its suo motu powers within the prescribed time; the sending for the record for examination being the terminus a quo for initiating revisional jurisdiction under Section 22-A.

6. The point in dispute is not res integra. The same stands concluded against the appellant by three judgments of this Court. The first judgment in point of time is S. Subba Rao v Commissioner of Commercial Taxes in Mysore, Bangalore, (1967)19 STC 257 (Kar.). In the said case, a Division Bench while examining the

powers conferred on the Commissioner under Section 21(2) which is in pari materia with Section 22-A which is under consideration before us, it was held that in case the records therein are called for within the period mentioned in Section 21(3), then no question of limitation arises. In other words, the limitation for initiation of proceedings is complete on summoning the records and it is not from the date the notices were sent to the parties or the termination of the proceedings. It was held as under:

"The power conferred on the Commissioner under Section 21(2) as could be gathered from its language includes three different facets, viz., (1) calling for the records mentioned therein, (2) examination of those records, and (3) passing such orders, with respect thereto as he thinks fit. The Commissioner begins to exercise his power under Section 21(2) as soon as he calls for the records in question and the exercise of that power comes to an end when he passes an order in respect thereto. All that Section 21(3) says is that the power conferred under Section 21(2) exercisable within four years from the date of the order of assessment, that is proposed to be revised. As mentioned earlier, the exercise of the power under Section 21(2) commences as soon as the records mentioned therein are called for. If that act is done within the period mentioned in Section 21(3), then no question of limitation arises. Mr. Srinivasan is not right in his contention that the powers of the Commissioner to call for the records, to examine them and to pass such orders as he thinks fit are three independent powers and all those powers should be exercised within the time fixed in Section 21(3). They are all facets of one single power, namely, the power to revise and that power is exercisable within the time mentioned in Section 21(3).

We are also unable to agree with Mr. Srinivasan that the power to call for records under Section 21(2) is not a part of the quasi-judicial power of the Commissioner to revise the orders of his subordinates. The power to call for records is a part of the revisional power of the Commissioner.

The expression "shall be exercisable" found in Section 21(3) refers to the commencement of exercise of the power referred to, and not the completion of the exercise of that power. Like all periods of limitation, Section 21(3) also refers to initiation of the proceedings and not its completion".

This judgment was later on followed in *Busunur Industries v State of Karnataka*, 1985 Kar. L.J. (Tri. Supp.) 242. In this case their Lordships were considering the exercise of power under Section 22-A(2) of the Act. Following the decision in the case *supra*, it was held as under:

"In this case, the Court has ruled that the period of limitation of four years under Section 21(3) of the Act as it stood then, which corresponds to Section 22-A(2) of the Act should be reckoned from the date the records were called for and not from the date the order was made by the Commissioner. We are of the view that this ruling is a direct authority on the very question urged before us and we are bound by the same".

13. We have carefully read the language of Section 21(3) of the Act that is analogous to Section 22-A(2) of the Act and the above ruling. We are of the view that the said ruling is in accordance with the language of Section 22-A(2) of the Act. We are of the view that the explanation added to Section 22-A(2) of the Act to exclude the period occupied by injunctions and stay orders on which reliance is placed by Sri Srinivasan to urge as additional ground for reconsideration of Subba Rao's case, *supra*, does not shed any light on the construction of Section 22-A(2) of the Act at all. We do not find any good ground to doubt the correctness of the ruling in Subba Rao's case, *supra*, and refer the same to a larger Bench.

7. The matter was again considered by our Court in *M/s. Keshawa Trading Company and Others v Commissioner of Commercial Taxes, Bangalore*, 1985 Kar. L.J. (Tri. Supp.) 109. While following the earlier two judgments referred to above, their Lordships dismissed the writ petition filed by the assessee. In this case, Deputy Commissioner forwarded the records for initiating suo motu action in exercise of the powers under Section 22-A of the Act. The records were received by the Commissioner on 22nd March, 1977. Office of the Commissioner prepared note which reads as under:

"The above cases may lie over till the Supreme Court's decision in *State of Karnataka v B. Raghurama Shetty*, 4 SCST 3503, is received as we cannot initiate action under Section 22-A for the present".

This note was approved by the Commissioner on 8-7-1977. The Supreme Court decided *B. Raghurama Shetty's* case, *supra*, which was referred to in the order of the Commissioner on 24th of March, 1991 vide Note appended and it was thereafter that the Commissioner issued show-cause notice on 27th May, 1991 vide Note appended purporting to exercise power under Section 22-A(2) of the Act. The assessee's contention was that the exercise of its power was beyond the period of limitation which had expired and therefore, the notices issued by the Commissioner were illegal and therefore liable to be quashed. As against this, contention of the Revenue was that the note in respect of this was placed before the Commissioner and the Commissioner took a decision in para 3 of the note extracted above. He could be said to have initiated action in exercise of powers conferred upon him by that section and therefore, notice was not barred by limitation. High Court did not accept the contention raised by the assessee that the initiation or proceedings was not within the prescribed period of limitation.

8. Assessee carried appeal against this order to the Supreme Court. Special leave petition was granted and the appeal was listed as Civil Appeal No. 445 of 1996 (*M/s. Keshawa Trading Company and Others v Commissioner of Commercial Taxes in Karnataka, Bangalore*). It was decided on 26th of September, 1996 the copy of which was produced before us during the course of arguments. The judgment of the High Court was reversed on this point. Accepting the contention of the assessee and rejecting that of the Revenue, it was held as follows:

"This stand of the Revenue is not correct for the simple reason that the note extracted earlier clearly suggests that no action was initiated under Section 22-A as the judgment of this Court was awaited in B.R. Shetty's case, supra, which was pending in this Court. Hence, it was not possible to initiate any action under Section 22-A for the present. The words "we cannot initiate action under Section 22-A for the present" leave no room, for doubt that no action was initiated and, therefore, it was not correct to state in the show-cause notice that since the records had been received for examination on 23-3-1977 the action under Section 22-A must be taken to have been initiated on that date. It is also pertinent to note that the facts clearly show that it was the Deputy Commissioner who forwarded the records to the Commissioner on 18-3-1977, and the records were received by the Commissioner on 23-3-1977. Thereafter, the Commissioner had to make up his mind whether or not he considered it necessary to initiate action under Section 22-A of the Act. In this behalf he accepted the suggestion in paragraph 3 of the departmental note extracted earlier and agreed that he could not initiate action under Section 22-A since this Court's decision in B.R. Shetty's case, supra, was awaited. Whether he was right in doing so or not is not relevant but it is obvious that he did not initiate any action even after the receipt of the records for the reason mentioned in paragraph 3 of the departmental note. We have, therefore, no hesitation in coming to the conclusion that the reason trotted out in the show-cause notice for saving the action from being barred by limitation has no basis and cannot stand judicial scrutiny. We are, therefore, of the opinion that the conclusion reached by the High Court in the impugned decision in this behalf is clearly erroneous".

9. The learned Counsel for the appellant contended that the Supreme Court indirectly reversed the decision of the High Court and held that the revisional powers under Section 22-A could be exercised by sending the notice to the assessee within four years from the date of passing of orders sought to be revised. This submission of the Counsel cannot be accepted because, the Supreme Court accepted the plea of the assessee on the limited point and did not go into the larger question which had been decided in the cases of S. Subba Rao, supra and Busunur Industries, supra. We do not accept the contention that the judgment of the Supreme Court referred to above took a different view and indirectly reversed the view taken by this Court, that the initiation of proceedings under Section 22-A is by sending for the records within four years from the passing of the order sought to be reversed.

10. A perusal of the observation of the Supreme Court shows that what was held was that after the receipt of the records, the Commissioner did not initiate the action and postponed the same till the decision in B. Raghuram Shetty's case, supra. Without going into the question as to whether the Commissioner was right in postponing the decision and awaiting the decision of the Supreme Court in B.R. Shetty's case, supra, it was held that for the reasons given in the show-cause notice, the limitation for initiating the proceedings was not saved. The finding recorded by the High Court on the point of law was not reversed. The

reversal was on a point of fact relating to the interpretation to be placed upon the orders passed by the Commissioner postponing the initiation of proceedings to await the decision of the Supreme Court in B.R. Shetty's case, supra.

11. Counsel then contended that the records in this case was sent for on 8th of June, 1987 whereas the notice was served on the assessee-appellant on 20th of March, 1994 after a lapse of seven years. According to him, the notices should have been sent to him within a reasonable time from the receipt of the records and could not be delayed unreasonably or postponed indefinitely, thereby keeping the assessee in a suspended animation and keeping the democle's sword hanging over his head. There is substance in this submission and we were inclined to make observation and suggest that the legislature should take remedial steps and fix the period of limitation within which the final orders could be passed after the initiation of the proceedings. It has been brought to our notice that Section 22(b) has been inserted by Act No. 7 of 1997, providing that the authorities in exercise of the jurisdiction under Sections 12-A, 21 and 22-A of the Act shall pass orders referred to in the said section within a period of 2 years from the date of initiation of such proceedings or calling for records, as the case may be. In view of the amendment made by the Legislature by Act No. 7 of 1997, no observation need be made in this respect.

12. Relying upon a judgment of the Andhra Pradesh High Court in *State of Andhra Pradesh v Toshiba Anand Batteries Limited*, (1995)96 STC 664 (AP), in which their Lordships differed with the opinion expressed in *Subba Rao's case*, supra and *Busunur Industries, case*, supra, Counsel for the appellant contended that the matter be referred to a larger Bench for consideration. We do not agree with the suggestion made by the Counsel. Three different Division Benches of this Court have examined this point at different point of time and came to the same conclusion. Simply because another High Court has taken a different view by itself is no reason to reconsider the view taken by this Court. Otherwise, with due respect to the Hon'ble Judges of the Andhra Pradesh High Court, we do not agree with the reasoning adopted by them. The conclusion arrived at by them are against the plain language of the statute. Reliance was placed on *State of Andhra Pradesh v M. Ramakrishnaiah and Company*, (1994)93 STC 406 (SC), to come to the conclusion that the proceedings must conclude within four years from the date of passing of the order in revision. With respect, we say that the conclusion drawn by them from this judgment, is again on a wrong premises. Apex Court upheld the order of the High Court which was under challenge in the said case by affirming the finding recorded by the High Court that the order passed by the Deputy Commissioner was not made on the date it purported to have been made and the same could have been made after the expiry of the period of four years. There is no finding in this judgment that the proceedings can either be initiated by issuing a notice within four years of the passing of the order sought to be revised or that the proceedings must conclude within four years of the passing the order which was sought to be revised. Relying upon the view taken by this Court in the earlier judgments and for the reasons stated

above, we do not find any merit in this appeal and dismiss the same with no order as to costs.