(1997) 08 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 18273 of 1997

M/s. Shapoorji Pallonji and Company Limited, Mangalore — APPELLANT

Vs

The Additional Assistant Commissioner of Commercial Taxes, 3rd Circle, Mangalore — RESPONDENT

Date of Decision : 23-08-1997

Acts Referred:
Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 12D

Citation : (1997) 43 KarLJ 379

Hon'ble Judges : Tirath S. Thakur, J

Judgement

1. This writ petition even though posted for orders has been heard for final disposal with consent.

2. Aggrieved of an assessment order passed by the Additional Assistant Commissioner of Commercial Taxes, Mangalore for the assessment period 1-4-1995 to 31-3-1996, the petitioner made an application under Section 12-D of the Act seeking cancellation of the assessment and re-verification of the books of account. This application was dismissed by the Assessing Authority by his order dated 19th of June, 1997. Aggrieved, the petitioner has assailed the same in the present writ petition.

3. Mr. Kamath, learned Counsel for the petitioner-company, argued that the application in question had been disposed of by the Assessing Authority ex parte and without affording to the petitioner any opportunity of being heard in the matter. The order, it was contended was in violation of the principles of natural justice and had caused serious prejudice to the petitioner on that account.

4. Government Pleader on the other hand contended that the order under challenge was in terms of sub-section (4) of Section 12-D read with Section 22 of the Act appealable before the Tribunal. It was urged that the petitioner, if aggrieved of the order rejecting its application under Section 12-D could and ought to have questioned the same by way of an appeal instead of agitating the

matter in the present writ proceedings.

5. It is no doubt true that an order passed under Section 12-D is in terms of sub-section (4) of the said provision read with Section 22 of the Act appealable before the Karnataka Appellate Tribunal. The alternate remedy by way of appeal would not however be a bar to the maintainability of the present writ petition in case it is found that the order under challenge was passed in violation of the principles of natural justice. That precisely is the case of the petitioner as set-out in the writ petition and argued at the bar by its learned Counsel. In the statement of objections filed on behalf of the respondents, it is not their case that any notice was ever issued to the petitioner affording it an opportunity of being heard in the matter before the impugned order was passed. Even the order does not refer to the grant of any such opportunity. As a matter of fact, the Government Pleader fairly conceded that no such notice or opportunity was ever granted though he argued that such an opportunity was not one of the essential requirements of a valid order under Section 12-D. I am not however impressed by this submission. Section 12-D of the Act provides a statutory remedy against an order of assessment in certain situations stipulated therein. An assessee is therefore entitled to invoke the said provision, if its case falls within any one of those situations. Once such an application is made, the assessee would be entitled to a reasonable hearing before the Assessing Authority takes a final view on whether the case really falls within the purview of Section 12-D. Such a requirement even though not specifically engrafted in Section 12-D is implicit in the said provision. It follows that any order made by the Assessing Authority under Section 12-D without affording to the assessee an opportunity of being heard in support of such an application would be violative of the principles of natural justice. Since no such opportunity was in the instant case afforded to the petitioner, it is difficult to sustain the order made by the Assessing Authority.

6. In the result, this petition succeeds and is hereby allowed. Order dated 15th of May, 1997 passed by the Assessing Authority under Section 12-D is hereby quashed with a direction to the said authority to pass fresh orders on the petitioner''s application after affording to the petitioner an opportunity of being heard in the matter. In order to avoid any further delay in the disposal of the matter, the petitioner is directed to appear before the Assessing Authority for a personal hearing on 13th of October, 1997. It is made clear that if the petitioner does not appear before the Assessing Authority on the date fixed, the Assessing Authority shall be entitled to pass appropriate orders on the application without any further notice or opportunity to the petitioner.

7. No. costs.