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(1973) 07 KAR CK 0008

In the Karnataka High Court

Case No : S.T.R. Petition No. 32 of 1969

Nagaraja Overseas Traders APPELLANT

Vs

The State of Mysore RESPONDENT

Date of Decision : 11-07-1973

Acts Referred:

Mysore Sales Tax Act, 1957 — Section 12 A, 21

Citation : (1973) 2 MysLJ 443 : (1974) 33 STC 315

Hon'ble Judges : G.K. Govinda Bhat, C.J;Jagannatha Shetty, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; H.N. Narayan, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, C.J.—The petitioner was an assessee to tax under the Mysore Sales Tax Act, 1957, for the assessment year 1964-65. The Commercial Tax Officer who made the order of assessment in the first instance, granted deduction of an amount of Rs. 4,78,600.00; but later on he issued a notice u/s 12-A of the Act and made an order of assessment on the said turnover on the ground that the same has escaped assessment. Appeals preferred by the assessee to the Deputy Commissioner of Commercial Taxes and later to the Mysore Sales Tax Appellate Tribunal, Bangalore, were dismissed.

2. The only question that arises for decision is, whether the assessing authority had jurisdiction to bring the turnover in dispute to tax u/s 12-A of the Act. Section 12-A empowers the assessing authority to bring to tax an escaped turnover. When the turnover was already before the assessing authority when he made the first order of assessment, the said turnover cannot be said to be an escaped turnover. In such cases, the order granting deduction or exemption has to be corrected in revision u/s 21 of the Act. This court has held in Chikanarasimhiah v. Assistant Commissioner of Commercial Taxes, Bangalore City Division, Bangalore [1971] 28 S.T.C. 98, that "if the exemption of the turnover was improper, then the matter is not one for proceeding u/s 12-A but u/

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s 21 of the Act as stated earlier and that section 21 empowers the revisional authority to revise the orders passed by the subordinate authorities, if on examination of the record, the revisional authority is satisfied that the order of the subordinate authority is not legal or proper". Following the said decision, this revision petition is allowed and the order of the Tribunal made in S.T.A. No. 419 of 1968 is hereby reversed.

3. The petitioner is entitled to its costs. Advocate''s fee Rs. 100.

4. Petition allowed.

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