(1973) 07 KAR CK 0025

In the Karnataka High Court

Case No : S.T.R.P. No. 26 of 1972

Narsepalli Oil Mills APPELLANT

Vs

The State of Mysore RESPONDENT

Date of Decision : 19-07-1973

Acts Referred:

Citation : (1973) ILR (Kar) 1091 : (1973) 2 MysLJ 367 : (1973) 32 STC 599

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

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; M.P. Chandrakantraj Urs, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, C.J.—This matter arises under the Central Sales Tax Act, 1956. It relates to the assessment year 1958-59. The petitioner, who is a dealer submitted a return under the Central Sales Tax Act admitting a turnover of Rs. 23,44,572.44. In support of the return, the petitioner filed certain C forms in respect of a turnover of Rs. 18,41,932.21. The Commercial Tax Officer, Bellary, accepted the return as also the C forms and made an order of assessment levying a tax of Rs. 33,720.27 by his order dated 30th October, 1961. It is relevant to state that the return submitted by the petitioner as also the assessment made by the Commercial Tax Officer were on the assumption that the turnover reported by the petitioner related to inter-State sales of oil.

2. After the assessment order was made, the petitioner appears to have realised that the sales were not inter-State sales, but were outside sales in his opinion. He, therefore, preferred an appeal before the Deputy Commissioner of Commercial Taxes, Gulbarga Division, Bellary, contending that the sales were outside sales and, therefore, not exigible to tax. That appeal was dismissed by the Deputy Commissioner on the ground that the petitioner himself had admitted in his return that the sales were inter-State sales. The question whether the sales were inter-State sales or outside sales was not examined. The petitioner''s further appeal to the Tribunal was also unsuccessful. The Tribunal proceeded to

dispose of the petitioner''s appeal from (sic) contending that the sales were not exigible to tax as being outside sales since he has submitted his return as inter-State sales. In this revision petition, the assessee has challenged the view taken by the Tribunal.

3. The petitioner cannot ascribe any error in the order of the Commercial Tax Officer since his own return was accepted by the assessing authority and there was no dispute that the sales were not exigible to tax under the Central Sales Tax Act. If the assessee makes a mistake in submitting a return and submits to be assessed to tax before the assessing authority, he is not estopped or precluded by any law from preferring an appeal and showing to the appellate authority that the sales are, in fact, not exigible to tax. If such a contention is taken, the appellate authority is under a duty to examine the matter and determine the question whether or not the sales are exigible to tax. There is no question of invoking the doctrine of estoppel. In our opinion, the Deputy Commissioner of Commercial Taxes as also the Tribunal have failed to exercise the jurisdiction vested in them.

4. We, therefore, allow this revision petition, set aside the order of Deputy Commissioner of Commercial Taxes as well as of the Tribunal and remit the matter to the Deputy Commissioner of Commercial Taxes, Gulbarga Division, Bellary, with a direction to restore the petitioner''s appeal to his original file and dispose of the same in accordance with law. It is ordered accordingly. No costs.

5. Ordered accordingly.