
(1996) 08 KAR CK 0074

In the Karnataka High Court

Case No : Writ Petition No's. 16092 and 16093 of 1996

Ne Varadaraja Cashew Industries

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 06-08-1996

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 (6) (b), 12 B

Citation : (1996) ILR (Kar) 3327 : (1997) 42 KarLJ 52

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : S.A. Nazeer, for the Appellant; Smt. V. Vidya, High Court Government Pleader, for the Respondent

Judgement

G.C. Bharuka, J.—The petitioner seeks quashing of the orders of deferment dated May 16, 1996 (annexures G and H), which have been passed by the respondent-Joint Commissioner of Commercial Taxes for the year 1993-94, purporting to act u/s 12(6)(b) of the Karnataka Sales Tax Act, 1957 (in short "the Act"), as amended by Karnataka Act 5 of 1996.

2. The petitioner, a partnership firm, is engaged in the business of manufacturing of "cashew kernels". It is registered under the provisions of the Act.

3. For the year in question the petitioner-firm was served with the notice of demand in form 5 issued under the provisions of section 12-B of the Act read with rule 17(2) requiring him to pay the advance tax on raw cashew. The petitioner challenged the said notice, inter alia, on the ground that no tax was payable on the raw cashew, on various grounds by filing a writ petition bearing W.P. No. 37943 of 1992, wherein the operation of the said notice was stayed by an interim order dated December 9, 1993 (annexure A). Since the very same question of liability of tax on raw cashew was involved in the said writ petition pending before this Court, the assessing officer found it more desirable to seek an order of deferment till the matter was adjudicated by this Court. Accordingly, the petitioner was served with a show cause notice at annexures B and C

requiring him to file his objection to the proposed deferment for the aforesaid reasons. Pursuant to the said notice the petitioner filed his replies (annexures E and F). The 3rd respondent on due consideration of the objections so filed by the petitioner passed the impugned deferment orders.

4. The petitioner has assailed the impugned order on three grounds, namely, (i) section 12(6)(b) of the Act, does not confer power on the Joint Commissioner to defer the assessment which ought to have been provided under some specific independent provisions; (ii) no opportunity of personal hearing was granted to the petitioner; and (iii) the ground taken for deferment is extraneous and irrelevant for the said purposes.

5. For appreciating the contentions raised at the Bar it is appropriate to notice the relevant sub-sections of section 12 which is to the following effect :

"Section 12(5). No assessment under this section for any year shall be made after a period of three years from the date on which the return under sub-section (1) for that year is submitted by a dealer :

.....

Provided further that nothing in this sub-section limiting the time within which assessment may be made shall apply to an assessment made in consequence of or to give effect to any findings, directions or orders made under sections 20, 21, 22, or 22-A or any judgment or order made by any court.

(6) In computing the period of limitation for assessment under this section, -

(a) the time during which the proceedings for assessment in question have been deferred on account of any stay order granted by any court or any other authority shall be excluded;

(b) the time during which the assessment has been deferred in any case or class of cases by the Commissioner for reasons to be recorded in writing shall be excluded."

6. A reading of sub-section (6)(b) noticed above discloses that in computing the period of limitation for assessment, the time during which the assessment has been deferred in any case or class of cases by the Joint Commissioner for reasons to be recorded in writing shall be excluded. Though, under the Act there is no independent provision under which the Joint Commissioner can pass an order of deferment sub-section (6) itself makes the intention of the Legislature clear that it has intended to confer such power on the Joint Commissioner and once such order is passed, the limitation prescribed in sub-section (5) gets extended. I do not agree with Mr. Nazeer, that for exercising the powers of deferment, there should be an independent provision. The Legislature is competent to devise innovative mechanisms to express itself. Thus, the first contention fails.

7. So far as the ground of personal hearing is concerned, the petitioner was

required to appear before the 3rd respondent on April 30, 1996 at 11 a.m. According to the petitioner though his representative had gone to the office at the said time, he was informed that the 3rd respondent was on leave and therefore he could not avail the opportunity of having a personal hearing. In the statement of objections filed by the third respondent, it has been stated that he was very much present in the office on the said date and time. In support of the said fact he has produced copies of attendance register and office diary. In my opinion, in this case it is not necessary to adjudicate upon the said disputed fact, since admittedly the objections filed by the petitioner has been duly considered in the impugned order. Therefore, even if an opportunity of personal hearing was not granted that does not amount to violation of the principles of natural justice. In this connection, I am referring to the judgment of the Supreme Court in the case of Union of India and another Vs. M/s. Jesus Sales Corporation, , wherein it has been held (para 5) :

"The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connections, several judgments of this Court have been referred. It need not be pointed out that under different situations and conditions the requirement of compliance of the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearing have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters."

8. So far as the last ground is concerned in my opinion that also is equally fallacious, because admittedly the issue as to whether raw cashew was taxable or not had a bearing on the final assessment which was to be made against the petitioner. But since that question at the relevant time was pending consideration before this Court in W.P. No. 37943 of 1992 no fault can be found on the part of the respondents in deferring the assessment proceedings till the matter was finally adjudicated by this Court.

9. For the said reasons the writ petition is devoid of any merits, it is accordingly dismissed. No costs.

10. Writ petition dismissed.