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**(1966) 09 KAR CK 0024**

**In the Karnataka High Court**

**Case No : S.T.A. No. 56/64-65 and S.T.R.P. No. 23 of 1965**

N.V. Giryappa Setty and Sons

APPELLANT

Vs

State of Mysore

RESPONDENT

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**Date of Decision : 28-09-1966**

**Acts Referred:**

Mysore Sales Tax Act, 1957 — Section 12 (2), 12 (3), 20 (1)  
Mysore Sales Tax Rules, 1948 — Rule 18, 20, 21 (7), 22

**Citation :** (1966) 2 MysLJ 689 : (1967) 19 STC 197

**Hon'ble Judges :** K.S. Hegde, J;C. Honniah, J

**Bench :** Division Bench

**Advocate :** B.V. Katageri, for the Appellant; G.V. Shantha Raju, for the Respondent

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**Judgement**

Hegde, J.—This revision petition arises from the decision of the Mysore Sales Tax Appellate Tribunal, Bangalore, in S.T.A. No. 56 of 1964-65 on its file. The appeal before the Tribunal was dismissed on the ground that the same was barred by limitation. The question for our consideration is whether that decision suffers from any error of law.

2. Section 20(1) of the Mysore Sales Tax Act, 1957, as it stood at the time of the filing of the appeal, provided that any assessee objecting to an assessment made on him under sub-sections (2) and (3) of section 12, may within 30 days from the date on which he was served prescribed. The starting point of limitation for filing an appeal is the service of a "notice of assessment".

3. In the instant case, notice in Form No. 6 was served on the assessee on 13th August, 1958, and the appeal was filed only on 28th February, 1963, nearly five years after the service of notice in Form No. 6. The Tribunal has come to the conclusion that service of a notice in Form No. 6 is the service of a "notice of assessment" as contemplated u/s 20(1) referred to earlier. We have now to see whether that conclusion is correct. Form No. 6 reads as follows :

"Notice of final annual assessment and demand. [See rules 18, 1 (18-A), 20, 21(7), 37(3) and 38(3)].

Assessment No. ----- of 19 . Registration No.

Assistant Commercial Tax Officer ----- Commercial Tax Officer

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To

(Dealer)

Take notice that you have been finally assessed under the Mysore Sales Tax Act, 1957, to a tax of Rs. .... [Rupees ..... (in words)] only for the year ending ..... /the period up to and inclusive of the date of discontinuance of business, and that, after deducting the total amount of the payment(s) already made by you towards the tax for that year, you have to pay a further sum of Rs. .... [Rupees ..... (in words)] only. This balance of tax shall be paid within twenty-one days from the date of service of this notice, by money order to the undersigned or by crossed cheque in favour of the undersigned or by remittance into the Government Treasury at or by crossed demand draft or crossed postal order or to the Commercial Tax Officer or to the Bill Collector; failing which, the amount will be recovered as if it were an arrear of land revenue and you will be liable to penalty as provided in section 13 of the Mysore Sales Tax Act, 1957.

Turnover as determined by the Assessing Authority in respect of -

Nature of goods. Rate of tax. Turnover.

(1) (2) (3)

Total ... -----

Place :

Date :

Assessing Authority

1. (Inserted by Notification No. FD. 91 CSL. 64 dated 23rd July 1964).

NOTE. - (1) Where payment is made by cheque, the cheque shall be such as under the Mysore Financial Code is receivable by the Government treasury concerned.

(2) Strike out whichever is not applicable."

4. That notice purports to be a notice of final annual assessment and demand. No other form entitled as "notice of assessment" was brought to our notice. In our opinion, Form No. 6 combines a "notice of assessment" as well as a "notice

of demand". That being so, the service of notice in Form No. 6 must be considered as a service of a "notice of assessment" as contemplated by section 20(1).

5. There is no provision in the aforementioned Act or the rules framed thereunder requiring the assessing authority to serve a copy of his order of assessment on the assessee. If the assessee required a copy of that order, rule 22 provides that he should be given a copy of the same on an application. The starting point of limitation for filing an appeal u/s 20 is not the service of a copy of the order of assessment, but the service of a "notice of assessment". Hence, the appellant's appeal before the Deputy Commissioner was clearly barred by time.

6. But Mr. Katageri, the learned counsel for the assessee, relying on the decision of this Court, in Civil Revision Petition No. 401 of 1960, decided by a Bench of this Court, of which one of us (Hegde, J.) was a member on 10th January, 1962, contends that as per the rule laid down in that decision, the expression "notice of assessment" in section 20 should be understood as an "order of assessment". In that decision, this Court proceeded on the basis of certain admissions made by the counsel for the revenue. It appears that it was conceded in that case that no "notice of assessment" had been served on the assessee. Whether that admission is correct or not, is not relevant for our present purpose. Suffice it to say that this Court decided that case on the basis of an admission. Therein this Court further observed :

"In this case it is unnecessary to decide what exactly is meant by "notice of assessment". That question can be decided in an appropriate case if and when necessary."

7. It has now become necessary to decide as to what is meant by the expression "notice of assessment". For the reasons already mentioned by us, we are of the opinion that service of a notice in Form No. 6 is a service of a "notice of assessment" and the assessee having been served with that notice, nearly 5 years prior to his filing the appeal before the Deputy Commissioner, his appeal was clearly barred by time.

8. In the result, this revision petition fails and the same is dismissed. No costs.

9. Petition dismissed.