
(1964) 07 KAR CK 0015

In the Karnataka High Court

Case No : C.T.R.P. No. 44 of 1962-63, Sales Tax Appeal No. 1 of 1963

Rallis India Limited

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 17-07-1964

Acts Referred:

Mysore Sales Tax Act, 1957 — Section 15, 24 (1)

Citation : (1964) 1 MysLJ 501 : (1965) 16 STC 130

Hon'ble Judges : K.S. Hegde, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : V. Krishnamurthy, for the Appellant; B. Venkataswamy, High Court Government Pleader, for the Advocate-General, for the Respondent

Judgement

Hegde, J.—In this appeal u/s 24(1) of the Mysore Sales Tax Act, 1957, the appellant challenges the legality of the order passed by the Commissioner of Commercial Taxes in C.T.R.P. No. 44 of 1962-63 on his file. He contends that the Commissioner had no jurisdiction to pass the order impugned.

2. The material facts of the case are as follows :-

During the financial year 1955-56 the assessee-firm purchased in the former State of Hyderabad cotton of the value of Rs. 14,33,291-14-0 (which is the disputed turnover in this case) and that stock was exported outside that State after 1st April, 1956. Under the Hyderabad General Sales Tax Act, 1950, to be hereinafter referred to as the "Act", up to 31st March, 1956, sales tax was levied on the "last purchase", but from 1st April, 1956, the incidence was shifted to the "first purchase". The Commercial Tax Officer held that in respect of purchases made in the year 1955-56, referred to earlier, the assessee were the last purchasers and therefore liable to pay tax. But instead of including the relevant turnover in the assessee's turnover for the year 1955-56, he included the same in his turnover for the year 1956-57 and assessed it accordingly. The turnover in question has not been included in the return submitted by the assessee for the year 1955-56.

3. In appeal the Deputy Commissioner of Commercial Taxes, Bellary, held that the assessee is not liable to tax on the turnover in question. He was of the opinion that in view of the notification dated 1st April, 1956, the assessee was not liable to pay any tax in respect of the turnover in question. It is difficult to understand the ratio of his decision. The assessee's learned counsel had not supported that order. It is clearly an erroneous order.

4. The Commissioner of Commercial Taxes suo motu exercised his powers of revision and issued a notice, to the assessee on 5th June, 1962, calling upon him to show cause why the Deputy Commissioner's order should not be reversed and the turnover in question ordered to be included in his turnover for the year 1955-56 and taxed. After hearing the parties, the Commissioner set aside the order of the Deputy Commissioner of Commercial Taxes and directed that the turnover in question be added to the assessee's turnover for the year 1955-56 and taxed. The Commercial Tax Officer was directed to revise the demand notice issued to the assessee in pursuance of the above order.

5. From the facts set out above, it is clear and the same is not disputed on behalf of the Revenue that the turnover which the Commissioner of Commercial Taxes purported to bring within the net of taxation is that which was the part of the assessee's turnover of the year 1955-56. It may be noted that the Commissioner, in the exercise of his revisional powers, had called up the assessee's assessment records of the year 1956-57 and not 1955-56. The Commissioner, while purporting to revise the order of the Deputy Commissioner of Commercial Taxes, Bellary, in Appeal No. HAP 5/60-61 on the Deputy Commissioner's file, has in fact revised the assessment order made by the Commercial Tax Officer in assessee's case for the financial year 1955-56. The question for decision is whether the Commissioner had jurisdiction to do so. The order in question is purported to have been made u/s 15 of the Act which reads :

"(1) The Commissioner may in his discretion call for and examine the record of any order passed or proceeding taken under the provisions of this Act by any authority, officer or person subordinate to him and against which no appeal has been preferred to the Tribunal u/s 15-A for the purpose of satisfying himself with regard to the legality or propriety of such order or with regard to the regularity of such proceeding and may pass such order in reference thereto as he thinks fit.

(2) The powers conferred by sub-section (1) may be exercised by the Commissioner suo motu at any time or on application preferred within six months of the passing or making of the order or proceeding in question.

(3) No order prejudicial to the assessee shall be passed under this section unless he has been given a reasonable opportunity of being heard.

(4) Nothing contained in this section shall apply to the orders or proceedings of any Court or Magistrate."

6. From sub-section (1) of section 15, it is evident that the Commissioner, while

acting u/s 15, can only go into the legality or propriety or the regularity of the proceedings, which he has called up under that provision. As seen earlier, proceedings called up are those relating to the year 1956-57 and not of the year 1955-56. Hence, he had no jurisdiction to go into the correctness, legality or propriety or the regularity of the assessment proceedings of the year 1955-56. The assessment proceedings of that year are not even shown to have been before him at the time he made the order under appeal. In reality, what the Commissioner has done is to bring within the net of taxation a portion of the assessee's turnover of the year 1955-56 which has escaped assessment.

7. Section 15 of the Act does not confer on the Commissioner any power to tax escaped turnover. It merely empowers him to revise any order made by any of his subordinates and correct any errors therein. Escaped turnovers have to be dealt with under rule 32 of the rules framed and the authority who can act under that rule is the assessing authority, in the instant case the Commercial Tax Officer. Our attention has not been drawn to any provision of law under which the Commissioner could exercise that power. The power to tax an escaped turnover is an independent jurisdiction. It is an original jurisdiction and not a revisional jurisdiction. It is true that in certain respects the revisional jurisdiction of the Commissioner overlaps the original jurisdiction of the assessing authority under rule 32, e.g., a turnover which is included in the assessee's return but left unassessed by oversight or on an erroneous view of the law. Such an error can be rectified either by the assessing authority by having recourse to rule 32 or by the revisional authority u/s 15. See the decision of this Court in *The Coffee Board v. Commissioner of Commercial Taxes* (M.A. Nos. 60, 61, 114 and 115 of 1959).

8. It is now well settled that the power to assess an escaped turnover is an independent jurisdiction as well as an original jurisdiction, whereas the power to revise an order made is purely a revisional jurisdiction. This position is well settled by the decisions of the Supreme Court as well as that of the High Courts. See *State of Kerala v. M. Appukutty* [1963] 14 STC 242, *State of Orissa v. Debaki Debi and Others* [1964] 15 STC 153 and *State of Andhra Pradesh v. Varre Pothuraju and Ghanta Simhachalam* [1964] 15 STC 222.

9. For the reasons mentioned above, it is clear that the order appealed against was made without jurisdiction and hence it cannot be sustained. In the result this appeal is allowed and the order appealed against set aside. No costs.

10. Appeal allowed.