(1973) 10 KAR CK 0004

In the Karnataka High Court

Case No : S.T.A. No. 4 of 1972

R.R. Kashappanavar APPELLANT

Vs

The State of Mysore RESPONDENT

Date of Decision : 16-10-1973

Acts Referred:
Mysore Sales Tax Act, 1957 — Section 12 A, 22 A, 22 A (1), 24 (1)

Citation : (1974) 34 STC 334

Hon'ble Judges : G.K. Govinda Bhat, C.J;M K Srinivasa Iyengar, J

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; M.P. Chandrakantaraj Urs, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, C.J.—This is an appeal by a dealer u/s 24(1) of the Mysore Sales Tax Act, 1957, hereinafter called the Act, against the order of the Commissioner of Commercial Taxes in Mysore made in Case No. S.M.R. 2/71-72 dated 4th March, 1972, by which the Commissioner in exercise of his suo motu powers of revision u/s 22-A of the Act set aside the orders of the Deputy Commissioner of Commercial Taxes made in appeal and also the order of assessment made by the Commercial Tax Officer, Haveri.

2. For the period from 3rd November, 1967, to 21st October, 1968, the dealer submitted a return of turnover of Rs. 89,886.04. The Commercial Tax Officer, Haveri, who was the assessing authority, did not accept the turnover returned and he made an order of assessment on best of judgment basis determining the turnover at Rs. 2,36,500. The business of the dealer was that of a manufacturer of beaten rice by pounding paddy for which he consumed electricity. The Commercial Tax Officer determined the turnover on a comparison of the turnovers determined in the previous years and the relative increase in the consumption of electricity during the relevant year. The assessee aggrieved by the said order preferred an appeal before the Deputy Commissioner of Commercial Taxes, Belgaum Division, who, being of the opinion that it would be

reasonable to estimate the turnover of the dealer by the addition of Rs. 10,000 to the declared turnover, reduced the turnover to Rs. 99,886.04.

3. The Commissioner of Commercial Taxes in exercise of his suo motu powers of revision u/s 22-A of the Act, issued a show cause notice dated 20th July, 1971, proposing to set aside the final assessment order passed by the Commercial Tax Officer, Haveri, as also the appellate order passed by the Deputy Commissioner of Commercial Taxes dated 8th July, 1970, thereon. In the said notice, the Commissioner stated that "on going through the assessment records and on ascertaining the electrical energy consumed and the probable yield of paha (beaten rice) from the quantity of paddy which would require the amount of electricity consumed, the average sale price of paha during the relevant period ad such other relevant factors, it was found that proper investigation had not been made by the authorities below and that the turnover has been fixed in an arbitrary way at a figure very much lower than the turnover that ought to have been fixed". The said notice further stated that a turnover of Rs. 13,00,000 has not been taken into consideration by the lower authorities due to faulty investigation. The dealer filed his objections to the proposed revision. After hearing the counsel for the dealer, the Commissioner made the order under appeal after rejecting all the contentions urged on behalf of the dealer. After setting aside the orders of the authorities below, the Commissioner remanded the case to the Commercial Tax Officer to make a fresh order of assessment after investigation on the lines indicated in the said order.

4. Sri B. V. Katageri, the learned counsel for the appellant, submitted that the Commissioner had no power to remand the matter and that he ought to have made the final order himself. This contention of the learned counsel, in our opinion, is clearly untenable having regard to the clear language of sub-section (1) of section 22-A of the Act. The said sub-section reads thus :

"The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

5. The power conferred on the Commissioner includes the power of cancelling the assessment and directing a fresh assessment. When he has the power to cancel the assessment and to direct a fresh assessment, that could be done only by remanding the matter to the authorities below him.

6. The next ground urged by the learned counsel was that the Commissioner before he issued the show cause notice caused certain investigation to be made by the Commercial Tax Officer with regard to the electrical energy required for

converting paddy into beaten rice, and it is on the basis of the said report that the Commissioner had issued the show cause notice. According to the learned counsel, the revisional authority had no jurisdiction to look into any material apart from the material already on record. It is seen from the assessment order that a best of judgment turnover was determined on the basis of the electrical charge paid by the dealer during the relevant period. It is not doubt true that the Commissioner had directed the Commercial Tax Officer to send a report regarding the electrical energy required for converting one bag of paddy into paha and it is on the basis of the said report that he had made the proposal to revise the assessment by setting aside both the orders of the authorities below. Sub-section (1) of section 22-A which we have set out earlier confers the power on the Commissioner while exercising his revisional jurisdiction to make such inquiry as he deems necessary and thereupon pass such orders thereon as the circumstances of the case justify. According to the Commissioner, even the assessment order made by the Commercial Tax Officer was arbitrary and a turnover of Rs. 13,00,000 has not been taken into consideration. In our opinion, the Commercial has not restricted himself to the revisional powers conferred on him u/s 22-A of the Act. Where there is any case of escapement of turnover, the escaped turnover can be brought to assessment only by the assessing authority in exercise of the original jurisdiction conferred on him u/s 12-A of the Act. It is not a matter for the revisional authority to bring any turnover which has escaped assessment. This view of ours is supported by the decision of the Supreme Court in State of Kerala Vs. K.M. Charia Abdullah and Co., While explaining the scope of the revisional power the Supreme Court also indicated the limitations within which such power can be exercised holding thus :

"It would not invest the revising authority with power to launch upon enquiries at large so as either to trench upon the powers which are expressly reserved by the Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those powers. For instance, the power to reassess escaped turnover is primarily vested by rule 17 in the assessing officer and is to be exercised subject to certain limitations, and the revising authority will not be competent to make an enquiry for reassessing a taxpayer."

7. If, in the opinion of the Commissioner, any turnover in excess of Rs. 2,36,500 was liable to be assessed such excess turnover, being escaped turnover, cannot be brought to assessment u/s 22-A. In such a case, the remedy open to the revenue was to proceed u/s 12-A of the Act and not u/s 22-A. In our opinion, the order of the Deputy Commissioner made in the appeal is arbitrary and therefore was open to correction in revision. It was open to the Deputy Commissioner to make a further enquiry if he considered necessary and make a correct estimate of the turnover in accordance with law. The dealer had challenged the order of the Commercial Tax Officer before the Deputy Commissioner as arbitrary. The Commissioner was also of the opinion that the order of the Commercial Tax Officer was arbitrary. In these circumstances, what the Commissioner should have done was to set aside the order of the Deputy Commissioner and remand

the appeal for fresh disposal. The Commissioner was not right in setting aside the orders of all the authorities below directing the Commercial Tax Officer to make a fresh order of assessment.

8. For the reasons stated above, in modification of the order under appeal, we make the following order : The order of the Deputy Commissioner of Commercial Taxes in the Appeal Petition No. AP/DR/MST/269/69-70 is set aside and the case is remitted to the Deputy Commissioner for disposal of the said appeal afresh in accordance with law. In the circumstances, the parties are directed to bear their own costs.

9. Ordered accordingly.

