**(1958) 01 KAR CK 0010**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 220 of 1955

S. Krishnadevaraya — APPELLANT

Vs

The Assistant Sales Tax Officer and Others — RESPONDENT

**Date of Decision :** 15-01-1958

**Acts Referred:**
Mysore Sales Tax (Amendment) Act, 1955 — Section 2 (3), 4, 5

**Citation :** AIR 1959 Kar 209 : (1958) 36 MysLJ 642 : (1958) 9 STC 793

**Hon'ble Judges :** S.R. Das Gupta, C.J;A.R. Somnath Iyer, J

**Bench :** Division Bench

**Advocate :** S.K. Venkataranga Iyengar, for the Appellant; D.M. Chandrasekhar, for A.G., for the Respondent

## Judgement

Das Gupta, C.J.—This petition can be disposed of on one short round. It arises in this way:--. The Petitioner was provisionally assessed with tax in respect of the sale transactions of his business ending with 31-3-1955. He was given notice on 21-3-1955 calling upon him to pay the amount of the said assessment. The petitioner''s case is -- and that case has not been disputed before us -- that prior to such assessment he was not required to furnish either an advance estimate of his turnover for the year, or periodical returns of the actual turnover. At the said date there, was no provision in the Mysore Sales Tax Act, 1948, for mating provisional assessment. In August 1955 an amending Act being Act No. 17 of 1955 came into existence. Section 12 of the said Act provides as follows:--

"Validation:-- All assessments and collections made and other acts and things done (including orders made) before the commencement of this Act, which can be made or done under the principal Act as amended by Sections 2(3), 4 and 5 of this Act, are hereby declared to have been validly made or done and shall not be called in question in any manner."

2. Section 4 of the said Act inter alia provides as follows:--

"..... After Sub-section (1) of Section 3 of the principal Act, the following sub-section shall be inserted namely:--

"(I-A). The tax for each year may be assessed, levied and collected in advance during the year in monthly or quarterly instalments, and for that purpose a dealer may be required to furnish either on advance estimate of his turnover for the year, or periodical returns of the actual turnover as may be prescribed. The assessing authority may determine the amount of tax payable in respect of any period on the basis of the estimate or returns furnished by the dealer or on the basis of transactions of the dealer in the previous year and on such assessment, the dealer shall pay the sum demanded within such time as may be fixed by such authority....."

3. Thus it appears that by the validating section of this Act the said provisional assessment, which was not justified by the principal Act, was sought to be validated.

4. It was, however, contended before us by the learned Advocate appearing for the petitioner that by virtue of the said validating clause of this amending Act only those acts and things done before the commencement of the Act are declared to have been validly made which could have been made or done under the principal Act as amended by this Act. But, ho contended, the present provisional assessment cannot be said to have been validly made even under this amending Act. He pointed out to us that Section 4 of the amending Act requires that before a provisional assessment can be made, the taxing authority should call upon the assessee to furnish either an advance estimate of his turnover for the year or the periodical returns of the actual turnover as may be prescribed, and it is then that the assessing authority may determine the amount of tax either on the basis of the said estimate or returns as furnished by the dealer, or on the basis of the transactions of the dealer in the previous year, but in this case before tho provisional assessment in question was made his client was not asked to furnish either an advance estimate of his turnover for the year or periodical returns of the actual turnover.

It is not disputed that the petitioner was in fact not called upon by the authorities to furnish the said returns. The learned Advocate for the Petitioner, therefore, contended that in such circumstances the provisional assessment cannot be justified even u/s 4 of the amending Act.

5. In answer to the said contention the learned Advocate for the respondent urged that Section 4 of the amending Act gives a discretion to the authorities concerned to determine the provisional assessment either on the basis of the estimate or returns furnished by the dealer or on the basis of the transactions of the dealer during the previous year. That being so, it was optional on the part o? the assessing authority to require a dealer to furnish an advance estimate of his turnover or the periodical returns of the actual turnover. According to the learned Advocate, the authorities are not bound to require him to furnish such estimate and may proceed merely on the basis of the transactions of the dealer in the

 

previous year.

In my opinion, this contention or the learned Advocate for the respondent cannot be accepted as sound. Before I deal with the same I should mention that no rules required to be prescribed by the said Section 4 of the amending Act regarding the advance estimate of the turnover for the year or periodical returns of the actual turnover to be furnished by the assessee have yet been framed.

Therefore the authorities cannot require a dealer, even if they so want, to Burnish an advance estimate of his turnover for the year or periodical returns of the actual turnover and they have no other choice but to make a provisional assessment only on the basis of the transactions of the dealer in the previous year. The net result is that the section as contemplated cannot be given effect to in the absence of such rules.

6. In my opinion also the interpretation which the learned Advocate for the Respondent wants to put on the said section is not correct. For the purpose of making an assessment under the said section, the authorities have to require a dealer to furnish either an advance estimate of his turnover for the year or periodical returns of the actual turnover as may be prescribed, and after the return comes before the assessing authorities they may determine the amount of tax payable either on the basis of the return or on the basis of tho transactions of the dealer in the previous year.

In other words, both the matters are to be before the assessing authorities before they proceed to determine the amount of tax payable either on the basis of the return or on the basis of the transactions of the previous year. I am unable to accept the view that the assessing authorities may completely ignore that part of the section which requires an assessee to furnish an advance estimate of his turnover and proceed merely on the basis of his transactions in the previous year.

The true meaning of the said section, according to me, is that the authorities, before making a provisional assessment under the said section, have to require a dealer to furnish an estimate of his turnover as required in the said section and as may be prescribed by the rules and after that return conies to them, they may proceed to determine the amount of tax payable either on the basis of the said return or on the basis of the previous year''s transactions.

7. The result, therefore, is that assessment in question cannot be justified even under the validation clause of the amending Act 17 of 1955. Consequently the order of assessment is held to have been made without jurisdiction and is set aside. In the circumstances of the case, the parties will bear their own costs.

Somnath Iyer, J.

8. I agree.

9. Order set aside.

 