

(1978) 06 KAR CK 0012

In the Karnataka High Court

Case No : Writ Appeal No"s. 499 to 502 of 1974

Sha Vajeshankar Vasudev and Co.

APPELLANT

Vs

The Assistant Commissioner of Commercial of Commercial
Taxes (Assessments), Mangalore

RESPONDENT

Date of Decision : 09-06-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Karnataka Sales Tax Act, 1957 — Section 22, 23, 25 A

Citation : (1979) 1 KarLJ 64 : (1978) 42 STC 353

Hon'ble Judges : D.M. Chandrashekhar, C.J;N.D. Venkatesh, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; S.G. Doddakale Gowda, I Additional Government Advocate, for the Respondent

Judgement

Chandrashekhar, C.J.—These appeals are from the common order of Venkataramiah, J., in Writ Petitions Nos. 829 to 831 and 1556 of 1974. The appellants were the petitioners in the writ petitions and for the sake of convenience they will hereinafter be referred to as the assesseees.

2. In the writ petitions, the assesseees had impugned the orders of rectification made u/s 25-A of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act"), read with section 9 of the Central Sales Tax Act, 1956. The assessing authority had issued to the assesseees show cause notices which were served on 31st January, 1970. The orders of rectification impugned in Writ Petitions Nos. 829 to 831 of 1974 were passed on 30th January, 1974, and the order of rectification impugned in Writ Petition No. 1556 of 1974 was passed on 23rd February, 1974.

3. The only ground on which the orders of rectification were assailed was that they were passed beyond 5 years from the respective dates of the orders sought to be rectified.

4. Sri K. Srinivasan, learned counsel for the Appellant assessees contended that u/s 25-A of the Act an order of rectification can be made only within five years from the date of the order sought to be rectified and that in these cases the impugned orders of rectification were made beyond such time-limit.

5. The above contention was repelled by the learned single Judge who held that u/s 25-A of the Act, if rectification proceedings are commenced by issuing a show cause notice to the assessee within five years from the date of the order sought to be rectified, there is no time-limit for completing such proceedings by making an order of rectification. In other words, the limitation provided u/s 25-A is only for initiating rectification proceedings by issuing a show cause notice to the assessee and not for completing such proceedings by making an order of rectification.

6. Sri Srinivasan questioned the correctness of the view taken by the learned single Judge. In support of his contention he relied on the decision of this Court in K.G. Subramanya Vs. Commissioner of Agricultural Income Tax, Mysore, The learned single Judge distinguished that that decision on the ground that the language of section 35 of the Karnataka Agriculture Income Tax Act is materially different from that of section 25-A of the Act.

7. Sri Srinivasan sought to draw support from section 35 of the Indian Income Tax Act, 1922, which provides that an order of rectification shall be made within four years from the date of the order sought to be rectified and from sub-section (7) of section 154 of the Income Tax Act, 1961, which provides that no amendment under that section shall be made after the expiry of four years from the date of the order to be amended. It was also contended by him that the decision of the Supreme Court in The Sales Tax Officer and Another Vs. Sudarsanam Iyengar and Sons, relied on by the learned single Judge, was based on the language of rule 33 of the Travancore-Cochin General Sales Tax Rules, 1950, which is not in pari materia with section 25-A of the Act.

8. For the purpose of these appeals it is not necessary to go into the question whether the time-limit of 5 years provided in section 25-A of the Act is only for initiating rectification proceedings or also for completing such proceedings. As all the orders, sought to be rectified by the impugned orders, were made prior to 9th June, 1970, the date on which the Karnataka Sales Tax (Second Amendment) Act, 1970 (hereinafter called the Amendment Act), is deemed to have come into force, the impugned orders are governed by section 8 of the Amendment Act, which reads as follows :

"8. Limitation for making order of rectification of mistakes in certain cases. - Notwithstanding anything contained in section 22, 23 and 25-A of the principal Act as amended by this Act, proceedings to rectify mistakes apparent from the record in any order made under the principal Act by an assessing authority, appellate authority, revising authority, the Appellate Tribunal or the High Court, at any time before the commencement of this Act may be commenced within five

years from the date of such order or one year from the date of the commencement of this Act whichever is later."

(Explanation is omitted as it is not necessary for these cases).

9. The above section provides that where an order sought to be rectified was made prior to the commencement of the Amendment Act, proceedings to rectify such order may be initiated within 5 years from the date of such order or within one year from the commencement of the Amendment Act, whichever is later. This section provides the time-limit only for commencing the rectification proceedings and not for completing them. The time-limit of 5 years for completing rectification proceedings cannot obviously apply to rectification of orders which come within the ambit of section 8 because it (that section) provides for rectifying orders made at any time before the commencement of the amending Act including orders made more than five years before such commencement. Since section 8 of the Amendment Act contains a non obstante clause, the provisions of this section override the provision of section 25-A of the Act. Assuming for the sake of argument that section 25-A provides a time-limit of 5 years for completing rectification proceedings and not merely for initiating such proceedings, such time-limit of 5 years does not apply for completing rectification proceedings in respect of orders coming within the ambit of section 8 of the Amendment Act.

10. In the present cases, the show cause notices had been issued before the commencement of the Amendment Act, that is, within the time-limit provided in section 8 of the Amendment Act. Hence there was no time-limit for completing the rectification proceedings by making the orders of rectification.

11. In the result, these appeals fail and are dismissed.

12. In the circumstances of these case, we direct the parties to bear their own costs.

13. Appeals dismissed.