(1983) 01 KAR CK 0008

In the Karnataka High Court

Case No : WP 641/83

Somanath Industries APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 27-01-1983

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 13

Citation : (1983) 2 KarLJ 513

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. This petition by M/s. Somanath Industries who carry on business of milling rice and converting other grains to flour is really directed against the notice of demand issued which is produced at annexure-A to the petition. But the prayer in the petition is to quash annexure-G, which is a letter issued to the petitioner Mills by the 3rd respondent Commercial Tax Officer merely setting out the grounds on which certain benefits of exemption could be enjoyed by the petitioner.

2. However, Sri. B.V. Katageri, learned Counsel appearing for the petioner, at the time of submitting arguments stated that that is a mistake and the real grievance of the petitioner is against annexure-A notice of demand for Rs. 21,580-28 being the sales tax due for August, 1982 in accordance with the return submitted for that month by the petitioner under S. 12-B (1) of the Karnataka Sales Tax Act.

3. It is not disputed that the 3rd respondent Sales-Tax Officer has jurisdiction to issue such notice. The only contention advanced is that the Department itself is due to refund a sum of Rs. 30,000-00 to the petitioner and therefore they could not issue the demand notice at annexure-G to the petition unless they refunded all the amounts due to the petitioner. Unfortunately there is no such provision in the Karnataka Sales Tax Act for mutual adjustment of dues in respect of such mutual claims.

4. Learned Counsel for the petitioner brought to the notice of the Court the decision of the Supreme Court in the case of. N.C.Mukherjee & Co., v. Union of

India, 68 ITC 500. S.C. In that case the Supreme Court was considering the recovery of tax under certificates awarded for arrears of tax due as arrears of land revenue. In the context of such a situation the Supreme Court has indeed made observations that the certificate in such a case must be issued only after examining whether any refund is due to the person from whom tax to be recovered under the Income-Tax Act has not been paid by the Income-Tax payer from whom the tax is now sought to be recovered under the revenue, recovery method. That was said so having regard to two facts:(a) that when large sums are demanded as excess profit tax it was the duty of the officers under the Income-Tax Act to settle the claims for refund under the Act of the assessee; (2) that the Income-Tax Act itself provides for refund of tax whenever tax had been paid in excess. It was only in that circumstance, the Supreme Court came to make the observation to which I have referred. That does not involve any principle or rule of natural justice. It merely gives effect to what is contained in the Statute itself. In the instant case, apart from the assertion that refund is due, no material is placed before the court that such refund is due to the petitioner.

5. In the result, this Writ Petition is misconceived and there is no error of jurisdiction on the part of the 3rd respondent to issue demand notice. Therefore, it cannot be interfered with. If there is any amount due by the respondent to the petitioner under the Karnataka Sales Tax Act, he is free to take appropriate steps to recover that amount either by filing a suit or approaching this Court for a mandamus for refund if it is due to be refunded or by any other procedure known to law.

6. The Writ Petition is rejected.

