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(1997) 06 KAR CK 0021

In the Karnataka High Court

Case No : Sales Tax Revision Petition No''s. 148 - 151 of 1996

Sree Srinivasa Constructions — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 30-06-1997

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 D, 20, 22, 23, 23 (1)

Citation : (1998) 110 STC 583

Hon'ble Judges : V. Gopala Gowda, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : S. Narayana, for the Appellant; Mrs. Sujatha, High Court Government Pleader, for the Respondent

Judgement

G.C. Bharuka, J.—The present revision petitions filed u/s 23(1) of the Karnataka Sales Tax Act, 1957 (in short, "the Act") are directed against a common order dated June 20, 1996 passed by the Tribunal in S.T.A. Nos. 277-80/96 pertaining to the years 1986-87 to 1989-90.

2. The petitioner is a partnership-firm. For the periods in question, the petitioner was initially subjected to the ex parte assessment orders all dated May 20, 1994. It had filed an application for cancellation of the said orders as required u/s 12D of the Act. But, at the same time writ petitions were also filed being Writ Petition No. 2829-93/94 for quashing of the said ex parte orders on jurisdictional grounds. When the writ petitions were taken up for preliminary hearing, the learned High Court Government Pleader produced the endorsement dated May 16, 1995 issued by the assessing officer from which it was enlightened that the ex parte assessment orders stood cancelled and the appellant was required to produce the books of accounts for making fresh assessments.

3. Accordingly, the writ petitions were disposed of in the said terms on June 8, 1995 (annexure A). Subsequently, the petitioner was subjected to fresh assessment orders for the years in question all dated July 28, 1995. The said orders were challenged in appeals before the Joint Commissioner who dismissed

the appeals on the ground that, in view of sub-section (3) of section 12D of the Act, the appeals, were not maintainable. On further appeal, the Tribunal also took the same view.

4. Section 12D of the Act reads as under :

"Section 12D : Cancellation of assessment in certain cases. - (1) Where an assessee within one month from the service of a notice of demand makes an application and satisfies the assessing authority that he was prevented by sufficient cause from appearing as required u/s 12, or that he did not receive the notice issued under that section or that he had not a reasonable opportunity of being heard, the assessing authority shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 12.

(2) Nothing contained in sub-section (1) shall apply to an assessment which has been made the subject-matter of an appeal u/s 20.

(3) No appeal shall lie u/s 20 against an order passed under this section.

(4) Every order passed under this section shall, subject to the provisions of sections 22, 23, 24 and 25A, be final."

5. Therefore, from the above sub-section (1) of section 12D, it is clear that once the ex parte order is cancelled, fresh assessment has to be made only in accordance with the provisions of section 12 of the Act. So far as sub-section (3) of the said section is concerned, it prohibits the filing of appeal only against the order passed under sub-section (1) thereof, i.e., the order refusing to cancel the ex parte assessment order. This prohibition cannot be made applicable against fresh assessment order which is made u/s 12 of the Act. This legal position could not be seriously disputed by Mrs. Sujatha, learned High Court Government Pleader appearing for the respondent-State.

6. Accordingly, the matters are remanded to the first appellate authority to dispose of the appeals filed by the petitioner on merits.

7. Matters remanded.

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