(1983) 07 KAR CK 0037

In the Karnataka High Court

Case No : S.T.R.P. No''s. 48 and 49 of 1977

State of Karnataka APPELLANT

Vs

Taj Commercial Corporation RESPONDENT

Date of Decision : 20-07-1983

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 20, 21 (2)

Citation : (1984) 57 STC 91

Hon'ble Judges : S.R. Rajasekhara Murthy, J;Jagannatha Shetty, J

Bench : Division Bench

Advocate : S. Rajendra Babu, for the Appellant; B.V. Acharya, G. Sarangan, for the Respondent

Judgement

Jagannatha Shetty, J.—These two revision petitions have been preferred by the State of Karnataka against the order of the Karnataka Appellate Tribunal dated 18th July, 1977, made in S.T.A. Nos. 142 and 143 of 1977.

2. The respondent is a firm which has been registered as a dealer under the Karnataka Sales Tax Act. For the assessment years 1968-69 and 1969-70, the Additional Commercial Tax Officer, Mangalore, passed the assessment orders in respect of the turnover of the firm. Against the said orders, the assessee preferred appeals challenging the legality of the assessment orders before the Deputy Commissioner of Commercial Taxes (Appeals), Mangalore Division. Those appeals were dismissed as barred by limitation, without going into the merits of the matter. Thereafter, the assessee moved the Deputy Commissioner of Commercial Taxes (Administration) in revision u/s 21(2) of the Karnataka Sales Tax Act, 1957. The Deputy Commissioner rejected the revisions on the ground that he was precluded from entraining such applications since the assessee had already preferred appeals against the assessment orders which were sought to be revised. The assessee thereafter took up the matter in appeals before the Karnataka Appellate Tribunal. The Tribunal accepted the appeals holding that mere dismissal of the appeals by the appellate authority as barred by limitation

was no impediment for the revising authority to entertain revision petitions u/s 21(2) of the Act. The Tribunal was of the opinion that the appeals preferred before the Deputy Commissioner u/s 20 must be an appeal in respect of which the appellate authority would be in a position to examine the merits of the matter.

3. The view taken by the Tribunal is being challenged in these revision petitions.

4. Section 21(2) of the Act as it stood during the material period provides as follows :

"The Deputy Commissioner may of his own motion call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by a Commercial Tax Officer subordinate to him and against which no appeal has been referred u/s 20, for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceeding and pass such order with respect thereto as he thinks fit."

It is clear from this section that the Deputy Commissioner may of his own motion call for and examine the record of any order passed under the provisions of the Act by a Commercial Tax Officer subordinate to him if that order had not been appealed against u/s 20. The revisional power is for the purpose of satisfying as to the legality or propriety of the order or as to the regularity of the proceedings taken by the assessing authority. The exercise of this power is, however, subject to the condition that the assessment order was not subject to an appeal. Section 20 confers a right of appeal to any person objecting to an order passed under the provisions of the Act. That section states that such an appeal must be preferred within 30 days. When section 21(2) refers to an appeal preferred u/s 20, it must be in the context, an appeal in conformity with section 20, and not an appeal in contravention thereof. The time barred appeal preferred by the assessee is certainly not an appeal that falls u/s 20 and cannot, therefore, operate as a bar for the revising authority to entertain the revision petition.

5. The view taken by us receive support from the decision of the Supreme Court in The Board of Revenue, Madras Vs. Raj Brothers Agencies,

6. In the result, these petitions fail and are dismissed without an order as to costs.

