
(1968) 12 KAR CK 0007

In the Karnataka High Court

Case No : S.T.A. No. 886 of 1967 and S.T.R.P. No. 25 of 1968

The Honorary Secretary, Kaniyara Seva Samaj

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 10-12-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96 (3)
Mysore Sales Tax Act, 1957 — Section 12 (3), 20

Citation : (1969) 23 STC 155

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; Vasudeva Reddy, for E.S. Venkataramaiah, Special Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—This revision petition relates to an assessment made by the Assistant Commercial Tax Officer in respect of the assessment year 1960-61 under the Mysore Sales Tax Act, 1957. When the petitioner which is called the Kaniyara Seva Samaj, and whose allegation is that it is a charitable institution, produced its return before the Assistant Commercial Tax Officer disclosing a turnover, the Assistant Commercial Tax Officer, on the basis of that return made an assessment. There was an appeal from this assessment order to the Assistant Commissioner in which the petitioner raised the contention that since it is a charitable institution which is supplying ready-made garments manufactured by it without there being any profit-making motive, there was no sale and there was, therefore, no taxable turnover. The Assistant Commissioner, who did not accept this contention, dismissed the appeal. The second appeal preferred by the petitioner to the Sales Tax Appellate Tribunal was also dismissed. So this revision petition.

2. The Sales Tax Appellate Tribunal did not investigate the sustainability of the contention that there were no sales by the petitioner to the persons to whom the ready-made garments were supplied. Although there was a very casual

observation made by the Tribunal that the petitioner had no case even on merits, there was no sufficient or adequate discussion of the evidence pertaining to the question whether there were no sales except that the Tribunal based its decision that the appeal should be dismissed on two grounds. The first was that since the order of assessment was made by the Assistant Commercial Tax Officer by consent, there could be no appeal from that order of assessment. The second was that since the petitioner did not, when it appealed to the Assistant Commissioner, deposit the tax which, according to its turnover, was admittedly payable, the appeal could not have been entertained.

3. It is clear that the Tribunal was not right in dismissing the appeal in this way. Section 20 of the Mysore Sales Tax Act, 1957, as it stood at the relevant point of time, authorised any appeal by the assessee from every order of assessment made under sub-sections (2) and (3) of section 12. The assessment from which the petitioner appealed to the Assistant Commissioner was made u/s 12(3) and so was an assessment appealable u/s 20. The fact that that assessment was made by consent did not take it out of section 20 since there is no provision under the Mysore Sales Tax Act corresponding to section 96(3) of the CPC which forbids an appeal from a consent order. Whether the assessment made by the Assistant Commercial Tax Officer was made by consent or whether it was made in any other way, what is indisputable is that it is an assessment and so long as it has the character of an assessment that assessment is appealable u/s 20(1).

4. Section 20(1) which reads :

"Any assessee objecting to an assessment made on him under subsections (2) and (3) of section 12 may within thirty days from the date on which he was served with notice of assessment, appeal to such authority as may be prescribed."

5. So the Assistant Commissioner could not have declined to entertain that appeal whatever may be the ground on which he could rest his decision in it.

6. So the Assistant Commissioner was right in not dismissing the appeal on the ground that the assessment was made by consent and in deciding it on its merits, and from that decision made by him, u/s 22 of the Act, the petitioner could prefer a second appeal to the Sales Tax Appellate Tribunal and when he preferred that appeal, as in this case, it was the duty of the Tribunal to decide it on the merits. The Tribunal was, therefore, not right in thinking that the appeal to the Assistant Commissioner was an incompetent appeal or that it could decline to make an adjudication in the further appeal preferred to it on the ground that the assessment was made by consent.

7. The second ground on which the Tribunal depended is, in our opinion, equally unsustainable. The view taken by the Tribunal was that when the petitioner preferred its appeal to the Assistant Commissioner, it should have deposited the tax, which, according to the turnover produced by it, was admittedly payable. This view was founded on the proviso to section 20(1) which reads :

"Provided further that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax as the case may be, admitted by the appellant to be due or of such instalments thereof as might have become payable as the case may be."

8. It is clear from this proviso that the tax, the deposit of which it speaks, is the tax the liability to pay which is no longer in dispute in the appeal. The words "admitted by the appellant to be due" which occur in this proviso make it clear that the deposit directed by it is compulsory only in a case where in the appeal preferred u/s 20, the appellant admits that some part of the tax assessed under the order of assessment made by the assessing authority is payable by him. And so, an appeal from the entire assessment excludes the element of an admitted liability.

9. The fact that the return produced by the petitioner disclosed a turnover does not introduce any admitted liability at the stage of the appeal which is the really relevant point of time. The concept of any such admission does not fit into the fact that the entire order of assessment was under challenge in the appeal preferred by it.

10. We set aside the order made by the Sales Tax Appellate Tribunal and remit the appeal to it for a fresh disposal on its merits.

11. No costs.

12. Appeal remitted.