(1966) 07 KAR CK 0009

In the Karnataka High Court

Case No : S.T.A. No''s. 97, 98/64-65, S.T.A. 238/64-65 and S.T.R.Ps. No''s. 29-30 and 36 of 1965

The State of Mysore — APPELLANT

Vs

Gayathri Trading Co. and Another — RESPONDENT

Date of Decision : 05-07-1966

Acts Referred:
Mysore Sales Tax Act, 1957 — Section 21 (2), 21 (2) (ii), 22, 32 (1)

Citation : (1966) 2 MysLJ 252 : (1966) 18 STC 349

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

Bench : Division Bench

Advocate : G. Shantha Raju for the Government Pleader, for the Appellant;

Judgement

Somnath Iyer, J.—The petitioner in all these three revision petitions is the State Government, and the complaint made by them is that there was an abdication on the part of the Sales Tax Appellate Tribunal of the appellate power confided to it by section 22 of the Mysore Sales Tax Act, 1957, read with section 32(1) of the Mysore Sales Tax (Amendment) Act, 1963 (Mysore Act No. 9 of 1964), which will be referred to as the amending Act.

2. Before the amending Act came into force, section 21(2) of the principal Act empowered the Commissioner of Commercial Taxes to exercise revisional jurisdiction either suo motu or on application. The assessees in all these three cases presented revision petitions to the Commissioner u/s 21(2)(ii) invoking that revisional jurisdiction. But, by the amending Act, that revisional jurisdiction was taken away from the Commissioner, and section 32(1) of the amending Act provided that all revision petitioners presented u/s 21(2) of the principal Act before it was amended and which were still pending before the Commissioner, shall stand transferred to the Appellate Tribunal and shall be disposed of by that Tribunal as if the said revision petitions were appeals preferred to the Tribunal u/s 22 of the principal Act. So it was that the Commissioner transmitted the papers relating to the revision petitions presented to him to the Sales Tax Appellate

Tribunal.

3. But the Sales Tax Appellate Tribunal retransmitted the records to the Commissioner on the ground that in one part of the revision petitions, the assessees had invoked the suo motu power of the Commissioner.

4. It is obvious that the Tribunal could not overcome the provisions of section 32(1) of the amending Act in that way. Every revision petition presented to the Commissioner before section 21(2) of the principal Act was amended and which was still pending before the Commissioner, stood statutorily transferred to the Appellate Tribunal and became transformed into an appeal, which that Tribunal was under a duty to decide u/s 22 of the principal Act. Once the revision petition became an appeal in that way, the Appellate Tribunal could not refuse to hear it on the ground that the persons who had presented the revision petitions had invoked the suo motu power of the Commissioner.

5. It is clear that under the amended provisions of the Act, the only revisional jurisdiction which is confided to the Commissioner is that created by section 22-A in the exercise of which he could revise orders made by officers subordinate to him only if they are prejudicial to the interests of the revenue. That revisional jurisdiction was unavailable in the cases before us in which the orders far from being prejudicial to the interests of the revenue, promoted that interest.

6. That being so, the retransmission of the records to the Commissioner was beyond the competence of the Appellate Tribunal.

7. We set aside the orders of the Appellate Tribunal by which there was such retransmission and we direct the Appellate Tribunal to hear and dispose of what have now become appeals before it on their merits and according to law.

8. No costs.

9. Ordered accordingly.