# S.N. Ramesh Vs. Commercial Tax Officer, Intelligence-iii, Bangalore

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**SooperKanoon Citation** : sooperkanoon.com/375810

**Court** : Karnataka

**Decided On :** May-30-1985

**Reported in** : ILR1985KAR3389; [1987]64STC143(Kar)

**Judge** : S.R. Rajasekhara Murthy, J.

**Acts** : Constitution of India - Article 226; Karnataka Sales Tax Act, 1957 - Sections 12-A; Karnataka Sales Tax Rules - Rule 43(2)

**Appeal No.** : Writ Petition Nos. 23699 and 23700 of 1980

**Appellant** : S.N. Ramesh

**Respondent** : Commercial Tax Officer, Intelligence-iii, Bangalore

**Advocate for Def.** : S. Rajendra Babu, Government Adv.

**Advocate for Pet/Ap.** : K. Srinivasan, Adv.

**Judgement** :

**S.R. Rajasekhara Murthy, J.**

1. In these petitions under article 226 of the Constitution by the common petitioner, the assessment orders dated 16th February, 1978, and 15th March, 1978 (annexures A and B) made by respondent, Commercial Tax Officer, Intelligence-III, Bangalore (CTO), for the assessment years 1972-73 and 1973-74 respectively

under the Karnataka Sales Tax Act of 1957 (Karnataka Act 25 of 1957) ('the Act') are challenged.

2. Petitioner claims to be an ex-partner of a partnership firm called 'the Mysore Steel Industries', Chamarajpet, Bangalore-18, against which assessments have been made by the CTO on 16th February, 1978 and 15th March, 1978, for the two years in question. He claims that the firm was dissolved on 1st April, 1974, and the assessments made thereafter under section 12-A of the Act without issue of notices on all the ex-partners of the firm, are illegal and in any event, cannot be enforced against the petitioner.

3. In support of his contention Sri Srinivasan strongly relies on a Division Bench ruling of this Court in S. M. Suligavi v. Judicial Magistrate, I Class reported in : ILR 1980 KAR1461 .

4. Sri S. Rajendra Babu, learned Government Advocate, refuting the contention of Sri Srinivasan relies on another Division Bench ruling of this Court in P. K. Ahmed v. State of Karnataka (STRP Nos. 13 to 15 of 1980 decided on 27th July, 1984) reported in : ILR 1985 KAR1285 .

Both these cases have been rendered under the Karnataka Sales Tax Act. In Suligavi's case : ILR 1980 KAR1461 , a Division Bench of this Court has held that service of notices of demand on all the ex-partners under section 13 of the Act was necessary before recovery proceedings could be initiated against all or any of the ex-partners of the dissolved firm for recovery of tax due from the dissolved firm.

In P. K. Ahmed's case : ILR 1985 KAR1285 , which is later decision, this Court while dealing with a case of assessment of a firm under the Karnataka Sales Tax Act after its dissolution, has held that an assessment made on a dissolved firm after the service of notice on one of the ex-partners only of the dissolved firm is valid. It is to be noticed that there is no reference to Suligavi's case : ILR 1980 KAR1461 ; : ILR 1980 KAR1461 in the latter judgment. But, their Lordships applied the ratio of the decisions of the Supreme Court in Commissioner of Income-tax v. Raja Reddy Mallaram : [1964]51ITR285(SC) and of this Court in Parvathamma v.

Income-tax Officer : [1974]93ITR138(KAR) and upheld the assessment.

Rule 43(2) of the Karnataka Sales Tax Rules which was relied upon by their Lordships in P. K. Ahmed's case : ILR 1985 KAR1285 is reproduced below :

'Where any Hindu undivided family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summons or orders issued under the Act or these Rules, may be served on any member of the Hindu undivided family or any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition, dissolution or discontinuance.'

5. It may be noticed that the decision of the Supreme Court in Raja Reddy Mallaram : [1964]51ITR285(SC) was rendered under section 44 of the Indian Income-tax Act, 1922, in the case of an Association of Persons (AOP) which had discontinued its business. The Supreme Court, relying on the provisions of section 63(2) of 1922 Act, held that a notice under the Act may be addressed and served on any member of the AOP for the purpose of assessment after the discontinuance of the business.

In K. L. Parvathamma v. Income-tax Officer : [1974]93ITR138(KAR) , a Division Bench of this Court held, relying on the provisions of section 283(2) of the Income-tax Act, 1961, that notice can be served, after dissolution of a firm on any person who was a partner (not being a minor) in the dissolved firm.

Section 283(2) which was relied upon by this Court is reproduced below :

'Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before its dissolution.'

6. Applying this rule to the facts in Ahmed's case : ILR 1985 KAR1285 , this Court ruled that notices under the Karnataka Sales Tax Act may be served on any person who was a partner of the dissolved firm, and that the assessment done without service of notice on all the erstwhile partners of the dissolved firm, is not

invalid in law.

7. But Sri Srinivasan's contention is that the principle laid down by this Court in Suligavi's case : ILR 1980 KAR1461 which was a case of recovery, should be applied to an earlier stage of assessment on a dissolved firm also. If his contention is to be accepted and the principle in Suligavi's case : ILR 1980 KAR1461 is applied to a case of assessment also, no assessment under the Karnataka Sales Tax Act can be done on a dissolved firm without issue of notices on all the erstwhile partners of a dissolved firm. But, according to this Court's view in P. K. Ahmed's case : ILR 1985 KAR1285 , no such individual notice on all the ex-partners, is contemplated in view of the provisions of rule 43(2) of the Karnataka Sales Tax Rules.

8. I have carefully perused the two decisions of this Court referred to above vis-a-vis the contention of Sri Srinivasan. In Suligavi's case : ILR 1980 KAR1461 , the question was whether the recovery proceedings taken against an ex-partner without service of notice of demand on him under section 13 of the Act are lawful and enforceable against him under the Act. Their Lordships of the Division Bench came to the conclusion that it is mandatory to serve a notice of demand on all the ex-partners of the dissolved firm before an application for recovery under section 13(3) of the Act against all/any of the ex-partners, could be taken. This conclusion was arrived at on the reasoning that an ex-partner cannot represent the firm after its dissolution, on the principle that he ceases to be an agent of the other partners, after dissolution. Obviously, it appears to me, apart from the reasoning given by their Lordships, the Division Bench took into consideration the definition of 'defaulter' in rule 38-C in Part V-B of the Karnataka Sales Tax Rules which provides for procedure for recovery of tax. 'Defaulter' as defined by rule 38-C means the assessee or dealer or any other person mentioned in the certificate of recovery issued by the assessing authority under rule 38-D.

9. In P. K. Ahmed's case : ILR 1985 KAR1285 , as already stated, this Court on identical facts, held, that in view of rule 43(2) of the Karnataka Sales Tax Rules, it is not mandatory to serve notices on all the erstwhile partners of the dissolved firm.

10. The two cases deal with different situations, viz., recovery and assessment. The view of this Court in P. K. Ahmed's case : ILR 1985 KAR1285 so far as procedure for assessment is concerned, is binding on me. No case is made out to apply Suligavi's case : ILR 1980 KAR1461 to the facts of the present case.

11. In view of the clear provisions of rule 43(2) of the Karnataka Sales Tax Rules, the assessment made in this case is not invalid and the contentions of the petitioner to the contrary are rejected.

12. Writ petitions are accordingly dismissed. No costs. Rule issued is discharged.

13. Writ petitions dismissed.