Lingeshwar and Co. Vs. Additional Commissioner of Commercial Taxes

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Court : Karnataka

Decided On : Jul-14-1997

Reported in : ILR1997KAR2233

Judge : G.C. Bharuka and ;V. Gopala Gowda, JJ.

Acts : Karnataka Sales Tax Act, 1957 - Sections 6(B), 22, 22(A) and A(3)

Appeal No. : S.T.A. Nos. 33 to 36 of 1997

Appellant : Lingeshwar and Co.

Respondent : Additional Commissioner of Commercial Taxes

Advocate for Def. : Smt. Sujatha, H.C.G.P.

Advocate for Pet/Ap. : K.S. Ramabhadran, Adv.

Judgement :

G.C. Bharuka, J.

1. The appellant is a partnership-firm. It is registered under the provisions of the Karnataka Sales Tax Act, 1957 (in short, 'the Act'). It carries on business in foodgrains, pulses, edible oils, etc. The present appeals have been directed against the orders dated February 17, 1997, February 17, 1997, February 18, 1997 and February 18, 1997 passed for the periods 1987-88, 1988-89, 1989-90

and 1990-91 by the Additional Commissioner of Commercial Taxes under section 22A(3) of the Act revising the appellate orders for the said years under its suo motu revisional jurisdiction.

2. The revisional authority keeping in view the law laid down by the Supreme Court in the case of Rajasthan Roller Flour Mills Association v. State of Rajasthan : AIR 1994 SC64 has brought the gramdal flour to levy of turnover tax at the rate of 1.25 per cent as provided under section 6B of the Act. Admittedly, the said point was neither raised nor decided in the earlier proceedings for the said assessment years taken before the Tribunal and the High Court. Despite these facts, Mr. K. S. Ramabhadran, learned counsel appearing for the appellant, has assailed the impugned revisional orders on the grounds that these are hit by the limitations provided under section 22A of the Act.

3. The relevant sub-sections of section 22A of the Act are to the following effect :

'22-A. Revisional powers of Additional Commissioner and Commissioner. - (1) The Additional Commissioner may on his own motion call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by any officer who is not above the rank of a Joint Commissioner, is erroneous in so far as it is prejudicial to the interest of the Revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment or directing a fresh assessment.

(2) The Commissioner may on his own motion call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the Revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the

assessment or directing a fresh assessment.

(3) The Additional Commissioner or the Commissioner shall not exercise any power under sub-section (1) or sub-section (2), as the case may be, if, -

(a) the time for appeal against the order has not expired;

(b) the order has been made the subject-matter of an appeal under section 22 or of a revision in the High Court; or

(c) more than four years have expired after the passing of the orders sought to be revised.

(4) Notwithstanding anything contained in sub-section (3), the Additional Commissioner or the Commissioner, may pass an order under sub-section (1) or (2), as the case may be, on any point which has not been raised and decided in an appeal or revision referred to in clause (b) of sub-section (3), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of a period of four years referred to in clause (c) of that sub-section whichever is later.

(5).....................'

From the reading of the above provision, it is clear that it is competent on the part of the Additional Commissioner and Commissioner to invoke the suo motu revisional jurisdiction provided : (i) the point on which the jurisdiction was sought to be exercised was not a subject-matter of appeal or revision before the Tribunal and/or the High Court; and (ii) the initiation of the proceedings was before the expiry of 4 years from the passing of the first appellate order.

4. In the present case, it is rather admitted that the impugned suo motu revisional proceedings had been initiated on July 6, 1996 which were much within four years from the date of passing of the first appellate orders which were sought to be revised. In the said view of the matter, we do not find any jurisdictional error in passing of the impugned orders.

5. The appeals are accordingly dismissed. No costs.

6. Appeals dismissed.