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Court : Karnataka

Decided On : Jan-31-1991

Reported in : [1993]89STC90(Kar)

Judge : K. Shivashankar Bhat and ;R. Ramakrishna, JJ.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 12(4) and 22A

Appeal No. : S.T.A. No. 12 of 1984

Appellant : S.S. Muddanna

Respondent : State of Karnataka

Advocate for Def. : H.L. Dattu, HCGP

Advocate for Pet/Ap. : G. Sarangan and ;K.S. Ramabhadran, Advs.

Judgement :

K. Shivashankar Bhat, J.

1. The order of the Commissioner of Commercial Taxes made in the exercise of his suo motu power of revision under section 22A is challenged herein. By this order, the Commissioner held that the disallowance of the exemption relating to buying agency transaction regarding dhania of the ought to be computed for the two months, and not to be confined to Rs. 74,032.26 being the turnover not

properly accounted for at the time of inspection. Since the inspection was held on December 20, 1979, and the accounting year commenced on October 22, 1979, the Commissioner held that the actual discovered escapement should be the basis to estimate the escaped turnover for the period from the date of commencement of the accounting year till the date of the discovery of escapement. For this relied on the decision of the Supreme Court reported in Commissioner of Sales Tax v. H. M. Esufali H. M. Abdulali [1973] 32 STC 77. The appellate authority had, while partly reversing the order of the assessing authority, held :

'The argument of the learned counsel has some force and deserves consideration. The assessing authority has not pointed out any omission in the books of account after the date of inspection. In the absence of any material to show that there was omission or suppression, the assessing authority is not justified in rejecting the exemption claimed by the appellant in respect of dhanias, jaggery, turmeric and armada seeds for the entire year. At most, he should have confined the rejection of exemptions in respect of the above commodities up to the date of inspection. This finds support from the case reported in (Ittymathew Son v. State of Kerala). In the said case, it was held that 'suppression of turnover found in the slips can form nexus only for the period earlier than the detention and it cannot be considered to give any nexus for a future period'. The above decision is equally applicable to the facts of the case on hand. Therefore, the rejection of exemption on buying agency transactions is restricted to the period on and prior to the date of inspection. As could be seen from the records, the appellant had effected any transaction in the capacity of buying commissioner agents prior to December 20, 1979, in respect of jaggery, armada seed and turmeric. However, there were six transactions in dhanias on and prior to December 20, 1979, amounting to Rs. 61,694.26. As this is the purchase value of transactions, the sale value of the said purchases is arrived at Rs. 74,033.26 after adding a gross profit of 20 per cent. Regarding jaggery found at the time of inspection, the same was recorded in the note book. The same was made crystal clear that it was received on December 20, 1979, for sales. The appellant had stated that he would produce the 'note book' for verification if the assessing authority desired to verify it again while furnishing the replies to form 31A. However, the assessing authority did not look into it again and overruled the objection stating that no such book was produced before the

inspecting authorities on the day of inspection. As the jaggery received from principal has been recorded in note book and the same was disposed on December 22, 1979, as selling commission agent paying taxes thereon, levy of tax on the value of 289 bags of jaggery is unwarranted and amounts to double taxation on the same transaction. As such levy of tax on jaggery amount to Rs. 34,680 is illegal therefore, the same is deleted. To sum up, the assessing authority instead of disallowing the exemption on the turnover of Rs. 14,04,852.77 declared by the appellant as buying commission agent for the entire year, should have disallowed the claims only on Rs. 74,852.28 in respect of dhania. Consequently the appellant succeeds in this respect partly.'

2. Thereafter, regarding penalty, the appellate authority after referring to section 12(4) held that the ingredients to apply section 12(4) were not available in the instant case, because, the assessee had disclosed the turnover and had filed return; hence penalty levied by the assessing authority was set aside.

3. The Commissioner in exercise of his suo motu revisional power held that the disallowance of turnover should be estimated for two months for dhania; he further held that to a similar period claim for exemption regarding turnover of jaggery also should be disallowed.

4. The question is whether the Commissioner was justified in exercising this of revision under 22A of the [Karnataka Sales Tax Act, 1957](#).

5. If the order made in any proceeding under the Act is found to be erroneous and it is prejudicial to the interest of the Revenue, the order is revisable under section 22A. In the instant case as to the turnover relating to dhania, it is clear that the assessee's explanation was not acceptable to all the authorities; but the first appellate authority thought it proper to disallow the exemption to the actual transaction found in the bills (i.e., Rs. 74,852.26). As against this the Commissioner held that, the said figure should be the basis to estimate the disallowance for the entire period from the commencement of the accounting year. The Commissioner thought that the decision of the Supreme Court in H. M. Esufali's case [1973] 32 STC 77 lays down such a principle. This is not a correct appreciation of the Supreme Court's decision. The Supreme Court held in the case

of a best judgment assessment guess-work is inevitable and so long as the guess-work is reasonable and has a nexus to the facts discovered, the best judgment assessment cannot be held to be illegal. At page 81, it was held :

'The assessee has neither pleaded nor established any justifiable reason for not entering in his accounts the dealings noted in the bill book seized. It is obvious that he was maintaining false accounts to evade payment of sales tax. In such a situation, it was not possible for the Sales Tax Officer to find out precisely the turnover suppressed. He could only make an estimate of the suppressed turnover on the basis of the material before him. So long as the estimate made by him is not arbitrary and has nexus with facts discovered, the same cannot be question. In the very nature of things the estimate made may be an over-estimate or an under estimate. But that is no ground for interfering with his 'best judgment'. It is true that the basis adopted by the officer should be relevant to the estimate made. The High Court was wrong in assuming that the assessing authority must have material before it to prove the exact turnover suppressed.'

6. In the said case on the facts of the case, the Supreme Court held that the turnover discovered for 19 days, can be basis to compute the escaped turnover for the entire year.

7. In the instant case, the appellate authority whose powers are co-extensive with the power of the assessing authority found that the estimate should be confined to one month and not two months. In other words the fact-finding authority applied one method to aid the guess-work, a method which cannot authority had any material to reverse it on the ground that, the method adopted by the appellate authority was erroneous and prejudicial to the interest of the Revenue The fact that another method could have been adopted by the appellate authority cannot be held to be erroneous.'Error' here, should be an error in approach, error in computation, error in applying the relevant law or facts, or error in selecting a principle which would not govern the facts situation; arbitrary exercise of the appellate power certainly would fall within the scope of section 22A. By resort to a different method, a larger tax can be levied and collected cannot be the sole consideration to attract section 22A, as prejudicial to the interest of the Revenue,

unless, the said method is only mode legally applicable.

8. As observed by the Madras High Court in Venkatakrishna Rice Company v. Commissioner of Income-tax : [1987]163ITR129(Mad)

'..... the expression 'prejudicial to the interest of the Revenue' is not to be construed in a petty-fogging manner, but must be given a dignified construction. It may be noted that the use of the expression 'Revenue', in our opinion, is significant. It denotes some kind of abstraction or symbol in the same sense in which the expression 'crown' is used to distinguish from any person enthroned. The interests of the Revenue is not to be equated to rupees and paise, merely. There is biblical saying that we do not live by bread alone. Varying this saying, it may be said that the Revenue does not live by tax alone. In this sense, therefore, the interests of the Revenue are not tied up merely with realising as much revenue as possible, willy nilly; merely looking to the productivity aspect of taxation. The jurisdiction of the Commissioner under section 263 is undoubtedly a supervisory jurisdiction. It is intended for interference in special cases to counteract orders which are erroneous as well as prejudicial to the interests of the Revenue. In this context, therefore, the expression 'prejudicial to the interests of the Revenue' must be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the income-tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue administration. There might be cases where the Commissioner might wish to interfere with an order of the Income-tax Officer in order to safeguard the fair name and reputation of the Income-tax department without any thought of going into the particular aspects of the assessment. Assessments which are mala fide politically and communally motivated may be, however, set aside as being prejudicial to the interests of the Revenue. It is unnecessary for us to illustrate the point any further. All that we wish to observe is that the scope of the interference under this section is not to set aside merely unfavourable orders and bring to tax some more money to the treasury. Nor is the section meant to get at sheer escapement of revenue which, as is well known, is taken care of by provisions elsewhere in the Act such, for instance, as section 147

of the Act. The prejudice must be prejudice to the Revenue administration.'

9. Though these observations were made in the context of Income-tax Act, the principles stated are unexceptionable and ought to govern the exercise of all similar jurisdictions.

10. Regarding the transaction pertaining to jaggery, the discussion of the assessing authority on the question is not clear; he states that regarding 289 bags of jaggery day-to-day stock accounts were not maintained on the date of inspection, while the appellate authority found that there was no suppression of the stock, ultimately, since the relevant recording was found in the not book. This was reversed by the Commissioner, because stock book was not produced for verification on the day of the inspection. He stated :

'It is evident that the dealer has sought to make up an excuse for the stocks found by the inspection to be outside the regular accounts. Further there was no explanation at the time of inspection as to the unaccounted stock of jaggery. The explanation now adduced that is had just arrived on the date of inspection for being sold on commissioner basis is clearly an after - thought which the appellate authority failed to see for what it is.'

11. This is nothing but purely a suspicious approach and the reversal is the result of mere conjecture and cannot be a basis to invoke section 22A of the Act.

12. Therefore, on the question of turnovers, we restore the order of the appellate authority.

13. The levy of penalty by the Commissioner is the result of his order under section 22A on merits regarding jaggery, which we have set aside. Consequently the levy of penalty of Rs. 1,387 by the Commissioner has to be set aside. Accordingly it is set aside.

14. In the result this appeal is allowed as stated above. No costs.

15. Appeal allowed.

