**SUPREME COURT OF INDIA**

N. Ranga Rao and Sons

Vs.

State of Karnataka

C.A.No.5852 of 2006

(S.H. Kapadia and B. Sudershan Reddy JJ.)

16.05.2007

**JUDGMENT**

**KAPADIA, J.**

1. This civil appeal is filed by the assessee and is directed against the judgment and order delivered by the Division Bench of the Karnataka High Court on 5.8.2006 in Tax Appeal No. 22/1996 holding the proceedings under Section 15(2) of Karnataka Tax on Entry of Goods Act, 1979 ("the said 1979 Act") are not barred by time.

2. A short question which arises for determination in the civil appeal is: Whether mere calling for the records for examination of the case on 16.3.1996 by Additional Commissioner constituted exercise of power within the meaning of Section 15(4) of the said 1979 Act so as to fall within the limitation period specified therein?

3. The appellant is the manufacturer of branded agarabathis having its manufacturing unit at Mysore. It causes entry of various raw materials into the local area of Mysore. For the Assessment Years 1986-87 to 1989-90, the Assessing Officer ("AO") passed an order of assessment levying tax on all the items imported into the local area of Mysore. According to the appellant, packing material was not to be taxed as raw material. This was not accepted by the AO. Aggrieved by the said decision, an appeal was filed. The Appellate Authority excluded the packing material from taxation. The decision of the Appellate Authority was delivered on 28.3.1992. On 20.5.1996 a show cause notice was given to the appellant-assessee by the Additional Commissioner under Section 15(1) stating that, upon scrutiny of the records, he found the order dated 28.3.1992 to be erroneous and prejudicial to the Revenue for the reason that as per serial No. 16-A of the Schedule to the 1979 Act, packing material was liable to be taxed @ 2%, which has not been noticed by the First Appellate Authority and, therefore, it had committed an error in setting aside the tax levied by the AO on the value of packing material. In the circumstances, the Additional Commissioner called upon the assessee to show cause as to why the order of the First Appellate Authority should not be set aside and restore the Assessment Order levying tax on the value of packing materials. In the show cause notice, the Additional Commissioner stated that the order of the First Appellate Authority was examined on 16.3.1996 and, therefore, the revision proceedings were within time.

4. As stated above, the short point which arises for determination in this civil appeal is whether mere calling for records of the case for examination on 16.3.1996 amounts to exercise of power under Section 15(4) of the said 1979 Act.

5. To complete the chronology of events, it may be noted that the order of the First Appellate Authority was dated 28.3.1992, the order calling for the records by the Additional Commissioner was around 16.3.1996, the decision, on the question of error in the order of the First Appellate Authority and the loss to the revenue consequent thereto, was dated 16.3.1996, the show cause notice was dated 20.5.1996 and the same was received by the assessee on 24.5.1996. The order ultimately passed by the Additional Commissioner under Section 15(1) was of 14/15.10.1996. Therefore, according to the assessee, mere calling for the records for examination around 16.3.1996 did not amount to exercise of power within the meaning of Section 15(4) of the said 1979 Act and if that be the case then, according to the assessee, issuance of the show cause notice on 20.5.1996 was beyond the prescribed period of 4 years from the date of the order passed by the First Appellate Authority on 28.3.1992. According to the assessee, in the present case, the Additional Commissioner had initiated proceedings by way of show cause notice on 20.5.1996. According to the assessee, proceedings under Section 15(1) could only be initiated by issuance of a show cause notice. According to the assessee, a mere consideration by the Additional Commissioner in his Chamber on 16.3.1996 regarding error in the order of the First Appellate Authority and the loss to the revenue cannot constitute initiation of proceedings under Section 15(1) and nor did it constitute exercise of power within the meaning of Section 15(4) of the said 1979 Act. Consequently, according to the assessee, the revisional proceedings (suo motu) were time barred.

6. The Karnataka Tax on Entry of Goods Act, 1979 was enacted to provide for the levy of tax on the entry of goods into local areas for consumption, use or sale therein. Section 3 is the charging section. Under Section 3 a tax was levied and collected on entry of goods mentioned in he First Schedule into a local area for consumption, use or sale therein at the rates prescribed. Section 3-A dealt with collection of tax by registered dealer. Chapter III dealt with filing of return, making of assessment, payment of taxes, recovery and collection of taxes. Under Section 5, every registered dealer was required annually to submit a return to the AO within the period prescribed. Section 5(4) and 5(5) provided for passing of assessment orders. Section 8 dealt with payment and recovery of tax. Chapter V dealt with appeals and revision. Section 15 formed part of Chapter V. We quote hereinbelow Section 15 and Section 15-B.

"15. Revisional Powers of Commissioner, Additional Commissioner, Joint Commissioner and Deputy Commissioner: (1) 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 interests 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 orders 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 Additional Commissioner may on his own motion call for and examine the record of any proceedings under the Act, and if he considers that any order passed therein by a Joint Commissioner, or an appellate authority of the rank of a Deputy Commissioner is erroneous in so far as it is prejudicial to the interests of 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 Joint Commissioner may on his own motion call for and examine the record of proceeding under this Act, and if he considers that any order passed therein by any officer who is not above the rank of Deputy Commissioner is erroneous in so far as it is prejudicial to the interests of revenue, he may, 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.

(4) The power under sub-sections (1) to (3) shall be exercisable only within a period of four years from the date of the order sought to be revised was passed. Explanation: In computing the period of limitation for the purpose of sub- section (4) any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded. xxx

15-B. Limitation in regard to passing orders in respect of certain proceedings: (1) Notwithstanding anything contained in Sections 6 and 15, where any proceeding is initiated under Section 6 or any records have been called for under Section 15, the authority referred to in the said sections shall pass orders within a period of three years from the date of initiation of such proceedings or calling for the records, as the case may be:

Provided that in respect of the proceedings initiated or records called for before the date of commencement of the Karnataka Taxation Laws (Amendment) Act, 1977, orders shall be passed within a period of four years from such commencement.

(2) In computing the period specified in sub-section(1), the period during which a proceeding, has been deferred on account of any stay granted by any Court or any other authority shall be excluded."

7. A bare reading of section 15(1) indicates that the Commissioner, Additional Commissioner, Joint Commissioner and Deputy Commissioner could suo motu call for and examine the records of any proceedings under this Act if he considered that any order passed therein by any officer subordinate to him was erroneous so as to be prejudicial to the interest of the revenue, he was empowered to stay the operation of such order for such period as he deemed fit and after giving the assessee an opportunity of being heard and after making such inquiry, as he thought fit, could pass such orders as the circumstances of the case would justify, including the order enhancing or modifying the assessment or even cancelling the assessment or even direct a fresh assessment. The pre-conditions to the exercise of this suo motu powers were two fold, namely, error in the order passed by an officer subordinate to the revisional authority and prejudice to the interest of revenue. Once these two conditions stood fulfilled, the revisional authority was authorized to give an opportunity to the assessee of being heard and after making such inquiry as he thought fit he could pass appropriate orders as the circumstances of the case would justify. This power was essentially a supervisory power. However, in order to ascertain whether the officer subordinate to him had passed an erroneous order, which was also prejudicial to revenue, the Commissioner including the Additional Commissioner etc. was required to call for and examine the record of such proceedings. Therefore, the revisional authority had to call for the records, he had to examine such records, he had to be

satisfied regarding fulfilment of the above two conditions and thereafter give opportunity to the assessee of being heard and on making appropriate inquiry the revisional authority was empowered to pass appropriate orders. It is important to note that under Section 15(1) there was no provision for giving a show cause notice as in the case of some other similar enactments. However, the power under sub-sections (1), (2) and (3) of Section 15 was exercisable only within four years from the date of the order sought to be revised. Under Section 15(4), therefore, a period of limitation was prescribed. The revisional authority had to exercise its powers only within four years from the date when the order sought to be revised was passed. Therefore, under Section 15(1) read with Section 15(4), there was no provision for issuance of a show cause notice. The reason is obvious. Section 15(4) required the revisional authority to exercise its powers within four years from the date of passing of the order sought to be revised. The concept of exercising the power is important, particularly in the absence of any provision for issuance of a show cause notice. When the revisional authority suo motu calls for the records for examination and when he examines that records, the exercise of power under Section 15(4) of the Act takes place. This can be equated to initiation of proceedings. There is one more aspect which needs to be considered. Conceptually, there is a distinction between initiation of proceedings and completion of proceedings within the stipulated period. The limitation prescribed in Section 15(4) was the limitation for initiation of proceedings whereas limitation prescribed in Section 15-B was in respect of completion of proceedings within the prescribed period. In our view, a bare reading of Section 15-B with the proviso indicates that Section 15-B was retrospective. Firstly, the Head Note indicates limitation in regard to passing of orders inter alia under Section 15. It stated clearly that, notwithstanding anything contained in Section 15, where any proceeding is initiated under Section 6 or where any records have been called for under Section 15, the authority shall pass orders within a period of three years from the date of calling for the records. The proviso clarified that in respect of proceedings in which records have been called for before the date of commencement of the Karnataka Taxation Laws (Amendment) Act, 1997 (with effect from 1.4.1997) the revisional authority shall dispose of the proceedings within a period of four years from such commencement. This proviso indicates that proceedings in which records have been called for even in cases falling before 1.4.1997 had to be disposed of within four years from the date of commencement of the (Amendment) Act, 1997. In our view, Section 15-B indicated the dichotomy between initiation of proceedings and completion of proceedings. The legislative intent was clear. It demarcated two aspects, namely, commencement of proceedings and completion of proceedings (outer limit). Section 15(4) prescribed limitation for commencement of proceedings whereas Section 15-B prescribed limitation for completion of the proceedings. We are required to keep in mind that the Legislature intended maximum leeway in cases where an error resulted in loss to revenue. In the circumstances, we are of the view that under the scheme of the 1979 Act, the initiation proceedings took place when the revisional authority called for the records of the case from the First Appellate Authority and, therefore, the jurisdiction stood exercised within the period of limitation. Lastly, we may state that on 1.4.1997 in the present case the tax appeal against the order of the Revisional Authority was pending decision vide Tax Appeal No. E.T. 22/96. Moreover, the law of limitation is generally procedural, hence, in our view, Section 15-B was retrospective. For the above reasons, we find no infirmity in the impugned judgment of the High Court.

8. Before concluding, we may state that, as discussed above, the Karnataka Tax on Entry of Goods Act, 1979 prescribed limitation for initiation of proceedings, it also prescribed limitation for completion of proceedings unlike some other Acts under which the limitation prescribed was only in respect of completion of proceedings. We do not wish to comment about those provisions/enactments. Our present judgment is confined strictly to the 1979 Act herein.

9. For the aforestated reasons, we find no infirmity in the impugned judgment of the Karnataka High Court and accordingly the civil appeal filed by the assessee stands dismissed with no order as to costs. As regards the merits of the case, we express no opinion as the same have not been argued before us.