

Deputy Commissioner Of Agricultural ... vs Dhanalakshmi Vilas Cashew Co. on 18 February, 1969

Equivalent citations: (1970)3SCC273, [1969]24STC491(SC), AIRONLINE 1969 SC 3, 1970 (3) SCC 273

Author: J.C. Shah

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

JUDGMENT

J.C. Shah, J.

1. These two appeals by certificate from the judgment of the Kerala High Court involve a common question of law and will stand disposed of by this judgment.

2. The facts in C.A. No. 804 of 1967 may alone be stated. The respondent was assessed under the General Sales Tax Act, 1125 (Act 11 of 1125) (State of Kerala), hereinafter called the "Act", for the year 1958-59 by the Assistant Sales Tax Officer, First Circle, Alleppey, by his order dated November 13, 1959. Subsequently the Deputy Commissioner of Agricultural Income-tax and Sales Tax, South Zone, Quilon, issued a notice dated October 29, 1963, to the respondent under Section 15(1)(i) of the Act proposing to revise the assessment on the ground that the assessing authority had committed a mistake in computing the assessable turnover to the extent of Rs. 17,000. In response to the notice the respondent submitted the objections on November 2, 1963. His contention, inter alia, was that the Deputy Commissioner had no jurisdiction to proceed in the matter under Section 15(1)(i) and he could proceed only under Rule 33 of the General Sales Tax Rules, 1950. It was also contended that for the aforesaid reason the proceedings proposed by the Deputy Commissioner were barred by limitation under that rule. The Deputy Commissioner overruled these contentions and revised the assessment by including an additional turnover of Rs. 17,994. The respondent took the matter in appeal to the Sales Tax Appellate Tribunal, Trivandrum. The Tribunal held that Rule 33 did not apply as it was not a case of escapement of turnover but it was a case of illegal and improper exemption having been granted by the assessing authority to which Section 15(1)(i) of the Act was applicable. The respondent filed a tax revision petition before the High Court which was allowed by the High Court following a decision given by it in *Ninan v. State of Kerala* 1965 K.L.J. 819.

3. In order to decide the points which have been raised before us it is necessary to refer to the statutory provisions and the rules made under the Act. The definition of "assessing authority" and

"Deputy Commissioner" is contained in Section 2, Clauses (b) and (cc), respectively. "Turnover" is defined by Clause (k) to mean "aggregate amount for which goods are either bought or sold by a dealer, whether for cash or for deferred payment or other valuable consideration..." Section 2-A gives the Constitution and functions of the Appellate Tribunal. Under Section 12 every dealer whose turnover is Rs. 10,000 or more in a year has to submit a return in such manner and within such period as may be prescribed to the assessing authority. The assessment has to be made by that authority. Section 14 provides for an appeal against the assessment made on a dealer. Every order passed in appeal by the appellate authority has been declared to be final subject to the provisions of Sections 15 to 15C. Section 15 of the Act provides for authorities competent to revise the orders. Sub-section (1) of that section reads:

15. (1) The Deputy Commissioner may-

(i) suo motu, or

(ii) on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit:

4. Provided that the Deputy Commissioner shall not revise any order or proceeding under this sub-section if-

(a) where an appeal against the order or proceeding lies to the Appellate Tribunal, the time within which such appeal may be made has not expired, or

(b) the order or proceeding has been made the subject of an appeal to the Appellate Tribunal.

5. The Board of Revenue has also been given similar powers and can revise suo motu or otherwise any order passed or proceeding recorded by the Deputy Commissioner under Sub-section (1). It is unnecessary to refer to the proviso to Sub-section (2) relating to the powers of the Board of Revenue. Section 15A(1) provides for an appeal to the Appellate Tribunal. Section 15B confers power on the High Court to entertain revisions against the order of the Appellate Tribunal. There is a direct appeal provided to the High Court by Section 15C against an order passed by the Board of Revenue suo motu. Section 24 enables Government to make Rules to carry out the purposes of the Act. Clauses (f) and (g) of Sub-section (2) of that section may be noticed :

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(f) the assessment to tax under this Act of any turnover which has escaped assessment, and the period within which such assessment may be made, not exceeding three years;

(g) the rectification of mistakes apparent from the record of any assessment, appeal or revision and the period within which such rectification may be made.

6. Rule 33(1) has been framed in the following terms :

(1) If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority as the case may be, subject to the provisions of Sub-rule (2) may at any time within three years next succeeding that to which the tax or licence fee relates determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable or levy the licence fee in such turnover after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

7. Before the Appellate Tribunal two questions were raised (in C.A. No. 804 of 1967). The first was that the Act had been repealed with effect from April 1, 1963, by the Kerala General Sales Tax Act (Act 15 of 1963) which came into force from that date and therefore the assessment which had been made under the repealed Act was illegal. The second question was whether the turnover which had been assessed by the Deputy Commissioner on suo motu revision had escaped assessment within Rule 33 to which the bar of three years provided thereby would be attracted. The first contention was given up before the Tribunal. On the second point the Tribunal was of the view that only such turnover can be regarded as having escaped assessment when it is not noticed by the assessing authority either by reason of inadvertence, omission or deliberate concealment on the part of the assessee or because of want of care on the part of the assessing authority itself. In the present case the Tribunal proceeded to say :

The turnover was before the officer. There was no inadvertence on the part of the officer in not taxing turnover. But he did not tax the turnover stating that 'the stock of pepper and ginger available is not liable to tax because they have been sold subsequently'. This only shows that the assessment was illegal and improper as exemption ought not to have been given as stock was not sold in the year of assessment but subsequently. We therefore find that the turnover had not escaped assessment but that the assessment was made illegally and improperly.

8. Now Section 15 of the Act empowers the Deputy Commissioner to call for and examine the record of any case suo motu or on application for the purpose of satisfying himself as to the legality or propriety of an order made by the subordinate authority or as to the regularity of the proceedings. He is further empowered to pass any order with respect thereto as he thinks fit. This jurisdiction is quite distinct and separate from the one created by Rule 33 which obviously has been framed under Clause (f) of Section 24(2). That rule enables the assessing authority within the prescribed period to determine to the best of its judgment the turnover of a "dealer" which has escaped assessment.

Section 15(1) is meant for interference when there is some illegality or impropriety or irregularity in the order of the assessing authority which has to be set right. It can hardly be said to cover those cases in which the turnover has escaped assessment. As has been observed in the State of Kerala v. M. Appukutty , in which similar provisions relating to the Madras General Sales Tax Act came up for consideration, the Deputy Commissioner while exercising revisional jurisdiction would be restricted to the examination of the record for determining whether the order of assessment was according to law. The rule which confers power to assess escaped turnover is normally to be exercised "on matters de hors the record of assessment proceedings" before the assessing authority. It has been pointed out that although the substantive provisions of the Act do not expressly deal with the power and procedure for assessment of escaped turnover but the Legislature has left it to be dealt with by statutory rules. In our judgment the present case is covered by the previous decision of this Court.

9. The High Court has followed its previous decision in Ninan v. State of Kerala 1965 K.L.J. 819. which was based on K. Sarvothama Shenoy and Co. v. Deputy Commissioner of Agricultural Income-tax & Sales Tax, Kozhikode 1965 K.L.J. 438. That was a case in which the provisions of the Madras General Sales Tax Act, 1939, came up for consideration. Govindan Nair, J., referred to the decision of this Court in the State of Kerala v. M. Appukutty , but felt that if the escapement of turnover was a special matter such action should be taken within the period provided by the rule. It may be that the case before the learned Judge involved a question of escapement of turnover but there can be no manner of doubt that in the present appeals before us the previous decision of this Court in State of Kerala v. M. Appukutty , would be fully applicable.

10. The appeals are consequently allowed and the decision of the High Court is set aside. As no one has appeared for the respondents there will be no order as to costs.