
(1967) 08 KL CK 0010
In the High Court Of Kerala
Case No : T.R.C. No. 27 of 1966

Arya Vaidya Pharmacy Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-08-1967

Acts Referred:

General Sales Tax Rules, 1950 — Rule 33(1)

Citation : (1967) 11 KLJ 781 : (1968) 21 STC 357

Hon'ble Judges : M.S. Menon, C.J.; S. Velu Pillai, J

Bench : Division Bench

Advocate : K.P. Ramunni Menon, K. Ramakumar and P. Ramaranjan, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, C.J.—This Tax Revision Case is directed against the assessment of that portion of the petitioner's turnover for the year 1960-61 which had escaped assessment when the original order of assessment was made on 30th November, 1961. That order was under the General Sales Tax Act, 1125.

2. The General Sales Tax Act, 1125, was repealed and replaced by the Kerala General Sales Tax Act, 1963, on 1st April, 1963. The notice regarding the proposal to assess the escaped turnover was issued only on 8th October, 1963. The contention of the assessee is that the department had no right to issue such a notice after 31st March, 1963.

3. Section 4 of the Interpretation and General Clauses Act, 1125, according to the department, will sustain the proceedings impugned before us. That section corresponds to Section 6 of the General Clauses Act, 1897, and reads as follows :-

Where any Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect ; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

4. The liability to be assessed in respect of the escaped turnover arose when it escaped assessment on 30th November, 1961. By virtue of Section 4 of the Interpretation and General Clauses Act, 1125, that liability should be considered as one which survived the repeal of the General Sales Tax Act, 1125, and as capable of being enforced as if the repealing Act, that is, the Kerala General Sales Tax Act, 1963, had not been passed.

5. The contention on behalf of the assessee is not that Section 4 of the Interpretation and General Clauses Act, 1125, has not got the effect mentioned above ; but that the said section is unavailable on the ground that a "different intention" is embodied in Section 61 of the Kerala General Sales Tax Act, 1963. There can be no doubt that if a "different intention" is embodied in Section 61 of the later enactment as contended by the assessee, Section 4 of the Interpretation and General Clauses Act, 1125, will not have any application and the controversy will have to be resolved solely on the basis of Section 61 of the Kerala General Sales Tax Act, 1963. The question for determination, therefore, is whether a "different intention" is manifest in Section 61 or not.

6. It is common ground that Sub-section (1) of Section 61 alone is material for the determination of this case. That sub-section reads as follows :

The General Sales Tax Act, 1125 (Act 11 of 1125), is hereby repealed:

Provided that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder, and subject thereto, anything done or any action taken, including any appointment, notification, notice, order, rule, form, regulation, certificate, licence or permit, in the exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken and all arrears of tax and other

amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.

7. The opening portion of the proviso makes it clear that the repeal of the General Sales Tax Act, 1125, will not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder. The remaining portion of the proviso is subject to the opening portion and therefore cannot control the saving effected thereby.

8. It is true that no proceedings to assess the escaped turnover were taken prior to the repeal of the General Sales Tax Act, 1125, and the coming into force of the Kerala General Sales Tax Act, 1963, the notice itself, as already stated, having been issued only on 8th October, 1963. But that can only mean that the second portion of the proviso is not attracted to the facts of this case. It cannot in any way affect the operation of the opening portion of the proviso under which the repeal of the General Sales Tax Act, 1125, will not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder prior to the repeal on 1st April, 1963. The right of the department to assess the escaped turnover and the liability of the assessee to be assessed in respect of that turnover, which was in existence when the General Sales Tax Act, 1125, was in force, is specifically preserved by the first portion of the proviso to Sub-section (1) of Section 61 and there is nothing in the remaining portion of that proviso which can in any way be construed as manifesting a "different intention" within the meaning of that expression as used in Section 4 of the Interpretation and General Clauses Act, 1125.

9. The period of limitation which is applicable to the case before us is the period provided by Sub-rule (1) of Rule 33 of the General Sales Tax Rules, 1950. That sub-rule provides that if for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to the tax in any year, the assessing authority may at any time within three years next succeeding that to which the tax relates determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable on such turnover after issuing a notice to the dealer and after making such enquiry as he considers necessary. The assessment of the escaped turnover in this case was on 15th October, 1963, that is, within three years next succeeding 1960-61, the year to which the tax relates.

10. In the light of what is stated above we must hold that proceedings to assess the escaped turnover were validly initiated on 8th October, 1963. We must also hold that the said turnover was validly assessed within the time prescribed by Rule 33(1) of the General Sales Tax Rules, 1950.

11. A further contention of the assessee is that certain sales of medicine from the assessee's place of business in pursuance of prescriptions issued should be considered as free from taxation by virtue of a G.O. dated 5th February, 1951. We have already held that those sales which the assessee styles as prescription

sales do not come within the ambit of that G.O. in our judgment in T. R. C. No. 28 of 1966. We see no reason to depart from that conclusion.

12. The T. R. C. fails and is hereby dismissed. No costs.