(1971) 02 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No. 2057 of 1969

Bangalore Timber Syndicate APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 25-02-1971

Acts Referred:
Cochin General Sales Tax Act, 1121 — Section 18

Citation : (1971) 28 STC 565

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : C.K. Viswanatha Iyer and P.V.V. Subramanian, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.U. Isaac, J.—The petitioner was assessed under the Cochin General Sales Tax Act, 1121, for the years 1948-49 and 1949-50. From the orders of assessment he filed appeals before the Appellate Assistant, Commissioner, Trichur, on 24th September, 1958. The appeals were partly allowed. But the petitioner was not satisfied with that; and u/s 18 of the Cochin Act, he filed two revision petitions before the Board of Revenue. The Board of Revenue, by its order exhibit P-1 dated 2nd December, 1968, rejected the revision petitions on the ground that it was not a competent authority to hear revisions u/s 18 of the Cochin Act. This writ petition has been filed to direct the State Government to appoint a Commissioner of Sales Tax to hear and dispose of the revisions u/s 18 of the Cochin Act, to quash the order exhibit P-1 of the Board of Revenue, and to direct it to restore the revision petitions and return the same to the petitioner for presenting the same to the Commissioner of Sales Tax to be appointed by the State Government.

2. The Cochin Sales Tax Act, 1121, was repealed and replaced by the Travancore-Cochin General Sales Tax Act, 1125, which came into force on 30th May, 1950. Section 25 of the Travancore-Cochin Act reads :

25. Power to remove difficulties.--If any difficulty arises in giving effect to the provisions of this Act, Government may, as occasion may require, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

After the repeal of the Cochin Act, it appears that the Travancore-Cochin Government did not appoint the necessary appellate authorities and revisional authorities under the Cochin Act in the place of those who ceased to exist. Difficulties arose with regard to the filing and/or disposal of appeals and revisions from orders of assessment made under the Cochin Act. In order to remove this difficulty, the Government, purporting to act u/s 25 of the Travancore-Cochin Act, issued a notification D. Dis. 4675/50/RD dated 12th July, 1950, authorising the officers under the Travancore-Cochin Act to discharge the functions of the corresponding officers under the Cochin Act. For revisions u/s 18 of the Cochin Act, the Board of Revenue was appointed Sales Tax Commissioner. The office of the Board of Revenue as Sales Tax Commissioner was abolished by notification SRI. 5672/B/55/RD dated 24th September, 1955. The result is that there is no authority to entertain and dispose of revisions under the Cochin Act after the above date. It is under these circumstances that the Board of Revenue passed the impugned order exhibit P-1.

3. In support of the relief for a writ of mandamus to the State Government to appoint a Commissioner of Sales Tax under the Cochin Act, the petitioner''s counsel contends that it can be done u/s 25 of the Travancore-Cochin Act; and he relies on a decision of a learned Single Judge of this Court in P.V.M. Koya v. The Sales Tax Officer, Kozhikode O.P. No. 975 of 1960. That is a case in which, under more or less similar circumstances, the learned Judge issued a writ directing the State Government to appoint a Commissioner of Sales Tax to hear and dispose of the revision petitions u/s 18 of the Cochin Act; and that decision fully supports the petitioner. But I am unable to follow that decision in view of a later Division Bench decision of this Court in Paramu v. Sales Tax Officer 1966 K.L.J. 728. In that case the petitioner filed a revision petition before the Deputy Commissioner of Sales Tax appointed under the Kerala General Sales Tax Act, 1963, from an order of an Appellate Assistant Commissioner made under the General Sales Tax Act, 1125. Under the Kerala Act, the Deputy Commissioner was not competent to entertain a revision from any order of the Appellate Assistant Commissioner; and therefore the revision was dismissed by the Deputy Commissioner. It is not clear from the above decision what exactly was the relief sought for by the petitioner in that case. It was contended there that the right of revision is a vested right, and that the petitioner was entitled to have a revising authority appointed for the purpose of entertaining his revision petition. The contention was rejected by this Court; and in doing so, it is stated:

Assuming therefore without deciding that a right to get an order revised is a vested right similar to or identical with the right of appeal, the question to be determined is, when the authority or the forum which originally had the power to revise the order has itself been abolished, whether the right to get the order revised will also get destroyed with that. That should be the consequence. This has been ruled by the Supreme Court in the decision in Dajisaheb Mane and Others Vs. Shankar Rao Vithal Rao Mane and Another, . The relevant passage is in paragraph 4 at page 30 which reads thus:

''If the court to which an appeal lies is altogether abolished without any forum substituted in its place for the disposal of pending matters or for the lodgment of appeals, the vested right perishes no doubt.''

The above decision applies to the instant case; and it negatives the petitioner''s contention. I may make one observation in respect of the decision of the learned Single Judge in P.V.M. Koya v. Sales Tax Officer, Kozhikode O.P. No. 975 of 1960, which has been relied on by counsel for the petitioner. Section 25 of the Travancore-Cochin Act empowers the Government only to do anything necessary for the purpose of removing any difficulty arising in giving effect to the provisions of that Act. That section has nothing to do with any difficulty that may arise in respect of the assessment proceedings under the Cochin Sales Tax Act, or in giving effect to the revisional provision therein. In the absence of any statutory provision specifically dealing with such matters, resort can only be had to the provisions of the Cochin Act for appointing competent authorities thereunder. That question does not, however, arise in view of the decision of the Division Bench referred to above.

4. In the result this writ petition is dismissed. There will be no order as to costs.

