
(2018) 03 KL CK 0137

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 3058 Of 2018

Binu Gopinath

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 21(1), 21(2), 25(1), 25B, 31(5), 55

Citation : (2018) 03 KL CK 0137

Hon'ble Judges : P.B. Suresh Kumar, J

Bench : Single Bench

Advocate : C.S. Manu, S.K.Premraj, V.K. Shamsudheen

Final Decision : Dismissed

Judgement

1. Petitioner was a dealer under the Kerala Value Added Tax Act (the Act) on the rolls of the third respondent, presently migrated to the Goods and Services Tax regime. On 17.11.2017, the third respondent issued Ext.P1 notice to the petitioner for assessing the escaped turnover of the petitioner for the year 2011-'12. Ext.P2 is the reply sent by the petitioner to Ext.P1 notice. In Ext.P2 reply, among others, the petitioner contended that the proceedings is barred by limitation. The third respondent assessed the escaped turnover of the petitioner as proposed in Ext.P1 notice, ignoring the plea of limitation raised by the petitioner. Ext.P3 is the order passed by the third respondent in this connection. Ext.P3 order is though appealable under Section 55 of the Act, the petitioner challenges the same in this proceedings on the ground that the same is an order issued without jurisdiction.

2. Heard the learned counsel for the petitioner as also the learned Government Pleader.

3. The learned counsel for the petitioner explicated the case set up by the petitioner pointing out that in terms of sub-section (1) of Section 25 of the Act, the proceedings for assessment of the escaped turn over of a dealer has to be

initiated within five years from the last date of the relevant year and the period of five years made mention of in sub-section (1) of Section 25 of the Act, in the case of the petitioner, in relation to the assessment 2011-12 expired on 31.3.2017, the last date of the relevant year being 31.3.2012. It is conceded by the learned counsel for the petitioner that in terms of Finance Act, 2017, the period 'five years' made mention of in sub-section (1) of Section 25 of the Act has been replaced by 'six years'. According to the learned counsel, the extended period introduced in terms of the Finance Act, 2017, cannot be availed of in the case of the petitioner for the assessment year 2011-12 as the statutory period for initiation of proceedings in the case of the petitioner for the year 2011-12 expired on 31.3.2017 before the date from which Finance Act, 2017, came into being viz, 1.4.2017.

4. Per contra, the learned Government Pleader contended that the time limit prescribed for initiation of proceedings for assessing the escaped turnover of the dealers under the Act, which expires by 31.3.2017, has been extended upto 31.3.2018 by virtue of the third proviso to sub-section (1) of Section 25 of the Act introduced with effect from 01.04.2017 in terms of the Finance Act, 2017. In the light of the said provision, according to the learned Government Pleader, the plea of limitation raised by the petitioner is without substance.

5. I have examined the contentions raised by the learned counsel on either side. As rightly contended by the petitioner, prior to the Finance Act, 2017, the time limit prescribed for initiating proceedings for assessing the escaped turnover of a dealer under sub-section (1) of Section 25 of the Act was five years. The question, therefore, is whether the provisions contained in sub-section (1) of Section 25 of the Act as amended from 01.04.2017, could be availed of by the competent authority for assessing the escaped turnover of the dealers under the Act for the year 2011-12. Sub-section (1) of Section 25 of the Act as it stands after the Finance Act, 2017 reads thus :

"Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or return period or has been under- assessed or has been assessed at a rate lower than the rate at which it is assessable or any deduction has been wrongly made therefrom, or where any input tax or special rebate credit has been wrongly availed of, the assessing authority may, at any time within six years from the last date of the year to which the return relates, proceed to determine, to the best of its judgment, the turnover which has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction in respect of which has been wrongly made or input tax or special rebate credit that has been wrongly availed of and assess the tax payable on such turnover or disallow the input tax or special rebate credit wrongly availed of, after issuing a notice on the dealer and after making such enquiry as it may consider necessary:

Provided that before making an assessment under this sub- section the dealer

shall be given a reasonable opportunity of being heard.

Provided further that where the escapement is due to the application of incorrect rate of tax, no assessment under this sub-section shall be made where the dealer files revised return and pays the tax which has escaped assessment along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee.

Provided also that the period for proceeding to determine any assessment including those subjected to extension under Section 25B which expires on 31st March, 2017, shall be extended upto 31st March, 2018."

The plain meaning of the words used in the third proviso to sub-section (1) of the Act indicates beyond doubt that the period fixed for proceeding to determine the turnover of the dealers which has escaped assessment to tax, which expires on 31.03.2017, has been extended upto 31.03.2018, in terms of the said proviso. In the light of the said provision, the third respondent is certainly entitled to initiate proceedings for assessing the escaped turn over of the petitioner for the year 2011-12 before 31.3.2018. The petitioner does not challenge the third proviso to sub-section (1) of Section 25 of the Act. In the absence of any challenge against the said provision, since the provision is unambiguous, the contention raised by the petitioner is without substance.

6. Further, it is seen that an identical contention raised in an almost identical fact situation has been turned down by the Apex Court in *Addl. Commr. (Legal) v. Jyoti Traders*, (1999) 2 SCC 77. The contention raised by the dealer under the Central Sales Tax Act in that case that a similar proviso added to Section 21(2) of the said Act, by which the period prescribed for making assessment was enlarged from four years to eight years from the end of the particular assessment year, does not apply to assessments that were barred before the introduction of the amendment. The Apex Court rejected the said contention holding that the commencement of the Act can be different from the operation of the Act, though some times both may be the same. The relevant portion of the judgment reads thus :

"Under sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this section, no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to sub-section (2) under which the Commissioner of Sales Tax authorises the assessing authority to make assessment or reassessment before the expiration of 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. 19-2-1991. We do not think that sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the proviso came into force,

the Commissioner of Sales Tax could authorise making of assessment or reassessment before the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or reassessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or reassessment under Section 21 which is to be done before the expiration of 8 years of that particular assessment year. Read as it is, these provisions would mean that the assessment for the year 1985-86 could be reopened up to 31-3-1994. Authorisation by the Commissioner of Sales Tax and completion of assessment or reassessment under sub-section (1) of Section 21 have to be completed within 8 years of the particular assessment year. Notice to the assessee follows the authorisation by the Commissioner of Sales Tax, its service on the assessee is not a condition precedent to reopen the assessment. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the respondents, the proviso added to sub-section (2) of Section 21 of the Act becomes redundant. Commencement of the Act can be different than the operation of the Act though sometimes, both may be the same. The proviso now added to sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if the period, as prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such provision. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/reassessment could have been completed within four years of that particular assessment year and now by the amendment adding the proviso to Section 21(2) of the Act it is eight years".

For the aforesaid reasons, the writ petition is without merits and the same is, accordingly, dismissed.