

(1977) 07 KL CK 0020

In the High Court Of Kerala

Case No : T.R.C. No"s. 26, 27 and 28 of 1975

C.C. Transport Company

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 22-07-1977

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 19, 35

Citation : (1977) 2 ILR (Ker) 418 : (1977) 40 STC 444

Hon'ble Judges : V. Balakrishna Eradi, J;T. Kochu Thommen, J

Bench : Division Bench

Advocate : V. Sivaraman Nair, V.M. Nayanar, K. Raveendran, M. Krishnakumar and K. Kanakachandran, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Kochu Thommen, J.—These tax revision cases arise from a common order of the Kerala Sales Tax Appellate Tribunal, Trivandrum, in respect of the years 1966-67, 1967-68 and 1968-69. The assessee is the same and the question of law raised is common in all these three cases. We shall therefore dispose of these cases by a common judgment. The question of law arising for our consideration is whether an order of remand made by the Deputy Commissioner u/s 35 of the Kerala General Sales Tax Act, 1963 (hereinafter called the Act), amounts to a direction to assess escaped income.

2. The taxable turnover of the assessee was determined by the Sales Tax Officer at Rs. 48,456.87 for the year 1966-67, Rs. 1,70,730.70 for the year 1967-68 and Rs. 75,036.45 for the year 1968-69. When the assessment records were examined by the Deputy Commissioner, North Zone, Kozhi-kode, he found that the Sales Tax Officer had wrongly exempted the entire turnover of spare parts sold by the assessee to its sister concerns. In his order u/s 35, the Deputy Commissioner stated that the assessee was entitled to claim exemption only in respect of goods which had already been subjected to a single point tax under

the Act. He pointed out that the records showed that some of the goods sold by the assessee were purchased by it from persons outside the State and such goods would not have been subjected to tax. It is only in the case of goods purchased by the assessee from persons inside the State and sold by it to its sister concerns that the assessee could claim exemption. The Deputy Commissioner therefore by his order dated 8th August, 1971, set aside the assessment orders in respect of the years 1966-67, 1967-68 and 1968-69 and directed the assessing authority to separate the inside purchases from the rest and limit the exemption to the former. This order was challenged by the assessee before the Tribunal contending that the order of remand is a direction to assess escaped income (sic) and such direction was illegal as it trenched upon the powers of the assessing authority u/s 19 of the Act which deals with the assessment of escaped turnover. It was further contended that in any case the proceedings initiated by the order of remand would be barred by limitation at least in so far as the assessment for the year 1966-67 was concerned. The Tribunal held that the order of the Deputy Commissioner was neither illegal nor time-barred. The assessee's appeal was accordingly dismissed by the Tribunal.

3. The main contention before us in these tax revision cases is that the impugned order of the Deputy Commissioner was illegal in so far as it has initiated proceedings for a fresh assessment of escaped income. It is contended that this order is an infringement of the jurisdiction of the assessing authority u/s 19 of the Act and it is unwarranted by Section 35 under which it is purported to have been made. It is further contended that the proceedings initiated under the order are time-barred.

4. The impugned order was made by the Deputy Commissioner by virtue of his suo motu revisional power u/s 35. This Section reads as follows :

35. Powers of revision of the Deputy Commissioner suo motu.-(1) The Deputy Commissioner may, of his own motion, call for and examine any order passed or proceedings recorded under this Act by the Inspecting Assistant Commissioner or any officer or authority of rank below that of an Inspecting Assistant Commissioner and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit.

(2) The Deputy Commissioner shall not pass any order under Sub-section (1) if-

(a) the time for appeal against the order has not expired;

(b) the order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired after the passing of the order referred to therein.

(3) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

It is not contended before us that Sub-section (2) of Section 35 has been violated. The grievance of the petitioner is that the impugned order was beyond the powers vested in the Deputy Commissioner under Sub-section (1) of Section 35. Counsel for the assessee Shri V. Sivaraman Nair relies upon the decision of this court in *O. Kassim Kannu v. State of Kerala* [1970] 26 S.T.C. 530, where it was held that the revisional power of the Deputy Commissioner u/s 35 was to be used only for the purpose of correcting any irregularity, illegality or impropriety of an order which he was empowered to revise and it was not to be used to infringe upon the jurisdiction of the Sales Tax Officer to assess escaped turnover u/s 19. This court pointed out that the powers u/s 35 and Section 19 operated in different fields. The Deputy Commissioner might, while exercising power u/s 35, call for the records and on examining them if he found that the order of the Sales Tax Officer was illegal, irregular or improper, direct a further investigation ; but such further investigation could not interfere with the power of the Sales Tax Officer to assess escaped turnover. Counsel contends that these principles have been violated by the Deputy Commissioner by remitting the case to the assessing authority for the purpose of bringing to tax turnover which had escaped assessment.

5. Section 19 of the Act deals with assessment of escaped turnover. It reads as follows:

19. Assessment of escaped turnover.-(1) 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 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, the assessing authority may, at any time within four years from the expiry of the year to which the tax 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 that has been wrongly made and assess the tax payable on such turnover 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....

Under Section 19, power to assess an escaped turnover is vested in the assessing authority. Section 35, on the other hand, confers power of revision upon the Deputy Commissioner. He may exercise such power suo motu for calling for and examining any order passed or proceeding recorded under the Act and for correcting any illegality, irregularity or impropriety which might have crept into the order passed or proceeding recorded by an Inspecting Assistant Commissioner or any officer or authority below him. The power of the assessing authority u/s 19 to assess an escaped turnover is distinct and different from the revisional power of the Deputy Commissioner u/s 35. While the revisional power is restricted to the examination of the records for determining whether the order

of assessment was according to law, the power to assess escaped turnover can be exercised in matters de hors the record of assessment proceedings. These two sections therefore relate to different jurisdictions and different matters. A valid order under the one is not an infringement of the power under the other: see *State of Kerala Vs. Shri M. Appukutty*, , *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co.*, and *State of Kerala Vs. K.E. Nainan*, .

6. In the present case, the Deputy Commissioner directed the assessing authority to separate purchases of spare parts from persons within the State from purchases from persons outside the State and limit the exemption to the former. This was a valid exercise of the revisional power u/s 35. The purpose of this order was to correct an illegality or irregularity which was detected while perusing the records. Any such order cannot be characterised as an attempt to trench upon the power of the assessing authority u/s 19. This order in revision dated 8th August, 1971, was made within four years from 2nd September, 1967, when the order of assessment was made. Accordingly, the order of the Deputy Commissioner was well within the time stipulated u/s 35. Any further steps which the assessing authority is directed to take pursuant to the order of the Deputy Commissioner would not be governed by the time-limit specified in Section 35 nor will it constitute a proceeding u/s 19 of the Act. It does not, therefore, matter that the investigation which is ordered within the time stipulated u/s 35 is actually conducted and concluded outside such time-limit, for, once the revisional order is passed u/s 35, the time bar mentioned thereunder can have no application to further proceedings, which emanate from such order.

7. In the circumstances, we see no merits in the contention that the order of the Deputy Commissioner is in effect an assessment of escaped turnover, or that it is barred by limitation. In our view, the impugned order is perfectly valid. These tax revision cases are accordingly dismissed. There will be no order as to costs.