

(1978) 04 KL CK 0004
In the High Court Of Kerala
Case No : T.R.C. No. 77 of 1977

C.N. Savankutty

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-04-1978

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 61

Citation : (1978) 2 ILR (Ker) 164 : (1978) 42 STC 204

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; T. Chandrasekhara Menon, J

Bench : Division Bench

Advocate : R. Bhaskaran, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, C.J.—The assessee was a partner of a firm by name Chenglan's New Stores. For the assessment year 1960-61 it filed a return disclosing a turnover of Rs. 2,27,112. Its accounts were rejected and the firm was assessed on a turnover of Rs. 4,62,250. In O. P. No. 86 of 1962, this court set aside the assessment order and remanded the proceedings back to the officer. A fresh notice was issued on 6th January, 1964, to which a reply was sent on 31st January, 1964. There were other notices which were issued by the department, which it is unnecessary to notice. It is enough to state that the firm was dissolved on 22nd August, 1962 and that the assessment was completed on 30th June, 1972. On these facts, the only contention that now survives for examination before us in this revision is whether the assessment completed on 30th June, 1972, was valid and proper.

2. Counsel for the assessee contended that under the General Sales Tax Act, 1125, by which the proceedings for assessment are governed in this case as they were initiated while the said Act was in force, a dissolved firm cannot be assessed and that the disability to assess continues even after the passing of the Kerala General Sales Tax Act, 1963, which contains Section 21A enabling

assessment of a dissolved firm. In support of the position that a dissolved firm cannot be assessed under the provisions of the General Sales Tax Act, 1125, counsel drew our attention to the decision of the Supreme Court in *State of Punjab Vs. Jullunder Vegetables Syndicate*, . In that case, *M/s. Jullundur Vegetables Syndicate*, a firm doing business in vegetables, was dissolved on 11th July, 1953 and a notice of dissolution was sent to the department on 18th July, 1953. It was assessed to sales tax on 30th May, 1953. The proceedings assessing the firm to tax were quashed by the Financial Commissioner and a fresh assessment was made on the turnover of the firm. It is not clear whether the fresh proceedings were initiated or whether the earlier proceedings initiated before the dissolution of the firm were merely continued. But the High Court had proceeded on the basis that the firm had been dissolved before fresh proceedings for assessment were initiated. On these facts, it was observed by the Supreme Court that the assessability had to be decided under the provisions of the 1953 statute (sic). We shall quote the following observations made by the Supreme Court:

6. We are concerned in this appeal with the question of the statutory right of a taxing authority under the provisions of the Act to assess a dissolved firm in respect of its pre-dissolution turnover. That question falls to be decided on the relevant provisions of the Act. The provisions of the Indian Partnership Act regulating the relationship between the partners and their liability to third parties have, except in so far as those provisions are expressly or by necessary implication incorporated in the provisions of the Act, no relevance to the present appeal. The question also falls to be decided on the provisions of the Act as it stood in 1953. Further, we cannot discover any distinction in the matter of assessability of a dissolved firm between a case where the proceedings were initiated before and that after the said dissolution. We shall proceed, therefore, to consider the question irrespective of that distinction....

9. In this context as we have stated earlier, there cannot be a distinction on principle between an assessment made on a firm under a proceeding initiated before the dissolution and that made in a proceeding started after the dissolution. In either case, unless there is an express provision, no assessment can be made on a firm which has lost its character as an assessable entity.

Counsel for the assessee placed the strongest reliance on these passages and contended that according to the decision of the Supreme Court it made no difference whether the firm was dissolved when the proceedings were pending or before they were initiated. We would like to point out that the observations in paragraph 6 must be qualified by what is stated in paragraph 9, namely, that unless there was an express provision no assessment could be made on a dissolved firm. In the later decision of the Supreme Court in *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, the decision in the *State of Punjab Vs. Jullunder Vegetables Syndicate*, was treated as authority for four propositions, namely : (1) a dissolved firm cannot be assessed to sales tax

unless the statute under which the assessment is made authorises the assessment either expressly or impliedly ; (2) if, by definition, a firm is a dealer under the Act, it becomes a legal entity or an independent assessable unit for the purposes of the Act. If that be so, it ceased to be a legal entity on dissolution and, thereafter, on principle it cannot be assessed to sales tax unless the statute authorised it expressly or by necessary implication; (3) neither a provision requiring a dealer to inform the authorities of the discontinuance of business, nor one imposing a joint and several liability on the dealer and its partners for payment of tax or penalty can be interpreted as conferring jurisdiction to assess a dissolved firm ; and (4) in interpreting a fiscal statute the court cannot proceed to make good the deficiencies, if any, in the statute. As thus explained, it is enough if there is an express or implied provision to continue the assessment of a dissolved firm ; and this is to be looked for in the statute under which the assessment is made. We are unable to find any provision in the General Sales Tax Act, 1125, by which a proceeding initiated against a firm while it was a legal entity for purposes of assessment automatically lapses on the dissolution of the firm. Along with this we have to take into account the significant provisions of Section 61 of the Kerala General Sales Tax Act, 1963, which, in so far as it is material reads as follows :

61. Repeal.-(I) The General Sales Tax Act, 1125 (Act XI 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....

In *Sales Tax Officer v. K.S.V. Gupta* [1971] 28 S.T.C. 722, a Division Bench of this Court examined the position in regard to the liability of a dissolved firm to assessment in the light of the provisions of Section 61 of the 1963 Act. It quoted also Section 4 of the (Kerala) Interpretation and General Clauses Act, 1125. After quoting both the provisions, the Division Bench observed:

Reading the two provisions together, it seems to be quite clear that if a proceeding had been initiated under the 1125 Act before its repeal it will be deemed to have been initiated under the provisions of the 1963 Act and can be continued accordingly-see *Cheru v. Sales Tax Officer, Ponnani* 1966 KLT 902. But, if no proceeding had been initiated under the repealed Act, then the enforcement of the liability under the repealed Act can only be under the provisions of that Act and the Rules made thereunder-*Arya Vaidya Pharmacy Ltd. v. State of Kerala*

[1968] 21 S.T.C. 357 . We are unable to accede to the argument that the proceedings for assessment for the year 1962-63 had been initiated under the repealed Act because a provisional assessment had been made thereunder. The provisions of the repealed Act as well as of the new Act make it abundantly clear that the provisional assessment is an entirely different thing from the final assessment and that proceedings for the levy of the provisional assessment and of the final assessment are entirely independent proceedings, the one having nothing to do with the other, although adjustments have to be made after the final assessment if there has been an over-collection or an under-collection in pursuance of the provisional assessment. That being so, the proceedings for the levy of the tax for the year 1962-63 can only be regarded as maintainable under the provisions of the 1125 Act and that Act not providing for a levy on a dissolved firm, the rule in *State of Punjab Vs. Jullunder Vegetables Syndicate*, still applies to make the assessment invalid. The amendment of the 1963 Act by the introduction of the new Section 21A and the validation of the assessments made under the 1963 Act by Section 7 of the Amendment Act, it is obvious, can be of no avail to validate an assessment made under the provisions of the Act of 1125.

Of course the actual decision on the case was rested on the ground that provisional assessment cannot be said to be a "proceeding" initiated under the provisions of the 1125 Act. But on the facts disclosed in the present case, we are clearly of the opinion that the proceedings for final assessment were initiated under the 1125 Act while the firm was a legal entity. That terminated in an assessment on 11th December, 1961 and the subsequent notices issued and the proceedings taken were clearly a continuation of the said proceedings. The fiction enacted by Section 61 of the 1963 Act would deem these proceedings to be taken under the 1963 Act from their inception. This is of course subject to any right accrued, etc. But no right had accrued under the 1125 Act, as proceedings had been initiated before the dissolution of the firm. The position is clearly recognised in *K. S. V. Gupta's case* [1971] 28 S.T.C. 722 . It is also recognised by the Supreme Court in *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, in the first of the four propositions by us, for which the *State of Punjab Vs. Jullunder Vegetables Syndicate*, was treated as authority. The recent decision in *Deputy Commissioner of Sales Tax v. V. S. Chamunni* [1978] 41 S.T.C. 474 (T. R. C. No. 26 of 1977) considered the position purely with respect to the provisions of the 1125 Act, uncomplicated by Section 61 of the 1963 Act or the principle in *Sales Tax Officer v. K. S. V. Gupta* 1966 KLT 902. We are of the opinion that there is no bar to the proceedings being continued under the provisions of Section 61 of the 1963 Act as construed by the Division Bench in the earlier case noticed.

3. Counsel for the assessee contended that, even so, the assessment in this case had been made only on the revision petitioner, who is only one of the partners of the dissolved firm. This is a point which has not been pleaded or considered by any of the authorities below and we are unable to entertain it for the first time in

this revision.

We dismiss this tax revision case, but without costs.