
(1967) 02 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 258 of 1966

C.S. Menon

APPELLANT

Vs

The Sales Tax Officer and Another

RESPONDENT

Date of Decision : 21-02-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1967) 20 STC 498

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

Bench : Single Bench

Advocate : C.S. Ananthakrishna Iyer, for the Appellant; The Government Pleader, for the Respondent

Judgement

M.U. Isaac, J.—The petitioner is an engineering contractor. In respect of works contracts, which he executed during the years 1950-51 to 1959-60 both inclusive, he was assessed to sales tax under the General Sales Tax Act, 1125 (Act 11 of 1125) (hereinafter referred to as the Act). Exhibits P-2 series are true copies of the orders of assessment made by the 1st respondent, the Sales Tax Officer, Second Circle, Ernakulam, in respect of the above-said years. The taxes assessed under these orders were duly paid by the petitioner ; and the total amount which he has paid by way of sales tax and surcharge is shown in exhibit P-I, a statement which he has appended to this original petition. The correctness of these facts is not questioned in the counter-affidavit filed on behalf of the State. The Supreme Court in South India Corporation (P.) Ltd. v. Secretary, Board of Revenue, Trivandrum [1964] 15 STC 74 held that the provisions contained in the Act, in so far as they authorised levy of sales tax on works contract, were beyond the legislative competence of the State and unconstitutional. This decision was rendered on 13th August, 1963. On the basis of this decision, the petitioner moved the Government for the refund of the amounts which he paid by way of tax for the aforesaid years, on the ground that he knew only by the above decision of the Supreme Court that the State was not entitled to levy tax on works contract, and that he was, therefore, entitled to get

the amounts refunded. The petitioner did not get any reply to this application ; and, therefore, he has come before this Court for a writ of mandamus to be issued against the respondents for refund of the amounts shown in exhibit P-1.

2. In the counter-affidavit filed on behalf of the respondents, it is contended that the assessments against the petitioner were made with jurisdiction and are valid until they are set aside in appropriate proceedings. The respondents also contend that the tax collected under these assessments was validly collected, that the petitioner is not entitled to get refund of the amounts, and that, however, this petition will not lie, as it has been filed far beyond three years from the dates on which the assessments were made, and the amounts were recovered by the State. The learned Government Pleader cited the decision in *Kamala Mills Ltd. Vs. State of Bombay*, , in support of his aforesaid contention. I am unable to agree with the learned Government Pleader. It is clear from the authority of the decisions of the Supreme Court in *South India Corporation (P.) Ltd. v. Secretary, Board of Revenue, Trivandrum* [1964] 15 STC 74 and *State of Madhya Pradesh and Anr. v. Bhailal Bhai and Ors.* [1964] 15 STC 450 that the assessments made in this case are without jurisdiction, because the State had no legislative competence to make the impugned levy, and that a petition under Article 226 of the Constitution for refund of tax made under such an illegal assessment can be entertained, if made within three years from the date when the mistake, on the basis of which the assessment and collection were made, became known to the parties concerned. The Supreme Court also held that the date on which the mistake became known is the date on which the law was declared. Accordingly, in this case, it will be 13th August, 1963, when the Supreme Court struck down the provisions contained in the Act, which empowered the State to levy a tax on works contract. This original petition has been filed within three years of the above date ; and it follows that the amounts recovered by the State by way of sales tax on works contract during the period covered by the decision in *South India Corporation (P.) Ltd. v. Secretary, Board of Revenue, Trivandrum* [1964] 15 STC 74 have to be refunded.

3. The petitioner's claim includes refund of the whole tax paid by him for the year 1959-60. But under the decision of the Supreme Court in *South India Corporation (P.) Ltd, v. Secretary, Board of Revenue, Trivandrum* [1964] 15 STC 74 all that he is entitled to get refunded is the tax relating to the turnover ending with 25th January, 1960. The total amount of sales tax and surcharge that the petitioner will be entitled to get by way of refund in respect of the years 1950-51 to 1958-59 is Rs. 31,216.76. I direct the respondents to refund this amount to the petitioner. The amount of sales tax for the year 1959-60 is Rs. 2,709.80 and the surcharge is Rs. 67.74. The amount collected by the 1st respondent on account of the turnover from 1st April, 1959 to 25th January, 1960, has to be ascertained. The petitioner is directed to move the 1st respondent for determination of the turnover in respect of the aforesaid period, and the sales tax and surcharge collected on account of the said turnover. The respondents will refund to the petitioner the amount of sales tax and surcharge recovered in

respect of the said turnover. The original petition is disposed of in the manner stated above. I make no order as to costs.