
(1987) 04 KL CK 0009
In the High Court Of Kerala
Case No : T. R .C. No. 73 of 1783

Dy. Commissioner (Law)

APPELLANT

Vs

M. Abdul Salam

RESPONDENT

Date of Decision : 09-04-1987

Acts Referred:

Central Sales Tax Act, 1956 — Section 6(a), 6A, 6A(1)
Kerala General Sales Tax Act, 1963 — Section 3, 34

Citation : (1988) 1 KLJ 29

Hon'ble Judges : T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : P. Sukumaran Nair, for the Respondent

Judgement

Radhakrishna Menon, J.

The Revenue is before us. The year of assessment is 1976-77. The questions of law, formulated by the petitioner, read:-

- (1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the first appellate authority is within his right, to accept the "F" Forms produced by the respondent/ assessee at the Appellate stage and granting him relief on that basis?
- (2) Is not the decision of the Appellate Tribunal against the provisions of Section 6(a) of the Central Sales Tax Act and also against the decision of this Honourable Court reported in 46 S. T. C. page 79?
- (3) Are the reasonings, findings and conclusions of the Appellate Tribunal correct in law?

The respondent assessee is an interstate dealer in Hill produce-The consignment sale to the tune of Rs. 15,491.91 was treated as interstate sale by the assessing authority as the said sale was not covered by either Form "F" or Form "C" declaration. Accordingly tax on the said sale was levied at the rate of 10%. The

Appellate Assistant Commissioner before whom the respondent assessee challenged the order, however, accepted the "F" and "C" Forms which were produced before him, entering a finding that the assessee was prevented by sufficient cause from producing the same at the stage of assessment and consequently directed the deletion of the aforesaid amount of Rs. 15,491.91 from the taxable turnover. The second appeal filed against the said order was dismissed by the Appellate Tribunal holding as follows:-

It is stated in the appellate order that the respondent assessee has produced F forms as it has been obtained on a subsequent date and, he has prayed to accept it as evidence in the first appeal. In the first appeal, the learned Appellate Assistant Commissioner has accepted this prayer. It is well settled that the appeal is a continuation of the assessment proceedings and, if the respondent/assessee is not in a position to produce F form or C form at the assessment stage, he can produce the same in the first appeal and the appellate authority is competent to entertain them as additional evidence if he is satisfied that the assessee has been prevented by sufficient cause for not producing the same in the assessment stage. In the case before us, the learned Appellate Assistant Commissioner has accepted the respondent's explanations that the F form has been obtained only subsequently and he has admitted the same as additional evidence. So, he has exercised a discretion vested in him under law pointing out sufficient reasons for the same, and, since he has acted within the powers vested in him, we do not find anything wrong on his part in accepting the same.

2. The above questions arise out of this order of the Appellate Tribunal.

3. The only point pressed before us by the learned counsel for the Revenue is the one covered by the question, whether the Appellate Assistant Commissioner was justified in accepting Forms F&C in evidence at the appellate stage and grant reliefs based on the said documents. In answer, the learned Government Pleader Sri. T. Karunakaran Nambiar, submits that the Appellate Authority has no jurisdiction to entertain the "Forms" at the appellate stage because under Rule 6(1B) of the Central Sales Tax(Kerala) Rules such documents were required to be produced before a named authority, namely the assessing authority, before the assessment in question was made. It therefore follows that the failure to produce these documents before the assessment was made, disentitles the assessee to get the benefits, he would have got, had he produced the said documents before the time for the production of them was over, the learned counsel submits. In support of this argument he relied on a decision of this court in Deputy Commr. of Sales Tax vs. Mcdowell & Co. Ltd. (46 S.T.C. 79), where interpreting Rule 12 (7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, a rule similar to Rule 6 (1B) of the Central Sales Tax (Kerala) Rules, this court has held that the Appellate Authority has no power to receive "C Forms which the assessee failed to produce before the assessing authority within the stipulated time, in evidence and grant reliefs based thereon. This court considering the scope of the said rule has held thus:-

We think the Tribunal went too- far in making such a direction. At the most, this should have been a matter of discretion for the Sales Tax Officer. This was freely conceded by the counsel appearing for the assessee. In these revision cases, we accordingly vacate the direction of the Appellate Tribunal directing the Sales Tax Officer to afford an opportunity to the assessee to produce the C form declarations.

In this decision the scope and ambit of the relevant Rule did not arise for consideration because the assessee therein had all but conceded the point. The decision should therefore be understood in the context of the relevant facts.

4. Any person objecting to an order affecting him passed by the assessing authority, has a right to file an appeal before the Appellate Assistant Commissioner u/s 34 of the Kerala General Sales Tax Act, for short the K.G.S.T. Act. Sub-section 3 of the said section provides that in disposing of an appeal the Appellate Assistant Commissioner may, after giving the appellant a reasonable opportunity of being heard, confirm, reduce, enhance, annul or set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed or the Appellate Authority may pass such other orders as he may think fit. These provisions thus indicate that the Appellate Authority has the power, necessary and essential to redo the assessment, in accordance with the law enacted by the legislature. In short the jurisdiction of the Appellate Assistant Commissioner is co-terminus with that of the assessing authority. That is why it has always been said that an appeal is a continuation of the process of assessment. The decision of the Supreme Court in C.I.T.U.P. Vs Kanpur Coal Syndicate (53 ITR 225) supports this view of ours. (See also the decision of the Supreme Court in Tel Utpadak Kendra vs. Dy. Commr of Sales Tax (A.I.R. 1981 S. C. 1617) holding that "an appeal" u/s 55 (6) (a) of the Bombay Sales Tax Act, "in a sense, is a continuation of the assessment".) The Supreme Court in Kanpur Coal Syndicate Case was construing Section 30 of the Indian Income Tax Act, 1922, conferring appellate power on the Appellate Assistant Commissioner, containing provisions virtually identical with the provisions contained in Section 34 K.G.S.T. Act. The Supreme Court after considering the various aspects of the matter held that the Appellate Assistant Commissioner can do what the Income Tax Officer can do and also direct him to do what he has failed to do. This being the position in law, it is difficult to accept the argument of the learned counsel for the Revenue that the Appellate Authority has no jurisdiction to receive the documents in evidence, in the course of the hearing of the appeal. It should in this connection be borne in mind that the Appellate Authority has the power-even to enhance the assessment although the appeal is at the assessee's instance. These are some of the special and exceptional attributes of the jurisdiction of an Appellate Authority under fiscal enactments. Taking note of such special attributes, courts have consistently been declaring that an Appellate Authority under a fiscal enactment -is in no way different, functionally and substantially, from the Assessing Authority itself.

5. Another approach to the point is this. We have to consider in this connection the scope and ambit of Section 6 A (1) of the Central Sales Tax Act. Sub-section 1 of Section 6A of the Central Sales Tax Act provides that where any dealer (assessee) claims, that he is not liable to pay tax in respect of any goods on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be and not by reason of sale, he is bound to prove the same by furnishing to the Assessing Authority within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration duly filled and signed by the principal officer of the other place of business, or his agent or principal, "as the case may be, containing the prescribed particulars in the prescribed "Form" obtained from the prescribed authority, along with the evidence of despatch of such goods. If sufficient cause is shown the Assessing Authority has a legal duty to extend the time prescribed for the production of the "Forms. The time for production of the Forms is prescribed under Rule 6,(1B) of the Central Sales Tax (Kerala) Rules. Under the said Rule the documents containing the declaration shall be filed before the assessment was over. A question therefore would arise as to how in such cases, where the assessment was over, the Assessing Authority could extend the time for the production of the "Forms" contained the declaration although Section 6A (1) confers such a power on the said authority. The answer is simple. When the power is there and the facts established in a given case, warrant its exercise, the implementation must be done as a matter of course, on the doctrine of implied or ancillary power. In appropriate cases therefore the Assessing Authority can take the essential corrective action by invoking its power of rectification or reopening. Such a view has been taken by the Madras High Court.-See State of Tamilnadu Vs. Arulmurugan & Co. 51 S.T.C. 381 at 395. With respect we concur with this view.

6. It is true that this power u/s 6A to receive the documents mentioned therein, beyond the period prescribed under Rule 6(1B) of the Central Sales Tax (Kerala) Rules, is conferred on a named authority. The order, the said named authority may pass under the Section therefore would be final, the learned counsel for the Revenue submits. Such orders accordingly would be excluded from review by Appellate Authority. This argument at the first blush appears to be sound but on a consideration of the scope and ambit of the provisions contained in Section 34 of the K. G. S. T. Act conferring Appellate power on the Appellate Assistant Commissioner we are satisfied that this argument is liable to be rejected. The language employed in Section 34 as already noted, is very wide. The Appellate Assistant Commissioner can revise not only the ultimate computation arrived at by the Sales-tax Officer but he can even revise every process which led to the ultimate computation or assessment. He can even enhance the assessment. As already stated he can do everything that the assessing authority can do and that it is so, is clear from the language used in the section. The substance of the matter as it appears to us, is that u/s 6A(1) in the first instance, it is for the

Sales-tax Officer to determine after considering the grounds urged by the assessee for the non-production of the documents within the prescribed time, whether or not the documents should be received in evidence and consequently correct the assessment. Because the power of the Appellate Authority is co-terminus with that of the assessing authority, the Appellate Authority can also invoke Section 6A (1) and determine whether the circumstances of the case warrant reception of the documents mentioned therein, in evidence at the Appellate stage and grant appropriate reliefs to the assessee who has filed the appeal. In this connection it is profitable to note that Section 6A(1) does not import any limitation on the power of the Appellate Assistant Commissioner u/s 34 which gives the Appellate Assistant Commissioner the power to revise every process which leads to the ultimate computation or assessment. "The Appellate Assistant Commissioner has thus the power to correct the error in the way most suitable in the circumstances of the case, provided he acts within the framework of Section 34 of the Act. He can correct such errors when he is seized of the appeal filed by the assessee. We are fortified in this view by a decision of the Supreme Court-See C.I.T. Vs, Mcmillan & Co. (33 T.T.R 182).

7. For the reasons stated above we are of the view that the Appellate Tribunal has rightly held that the Appellate Assistant Commissioner acted within his jurisdiction in entertaining the "F" Forms and granting appropriate reliefs to the assessee based on the said documents. The questions raised in the Tax Revision Case accordingly are answered against the State and in favour of the assessee.

The Tax Revision Case accordingly is dismissed but in the circumstances of the case there will be no order as to costs.