

(1963) 08 KL CK 0004
In the High Court Of Kerala
Case No : T.R.C. No"s. 20 and 21 of 1962

George

APPELLANT

Vs

Sales Tax Officer, 1st Circle, Trivandrum

RESPONDENT

Date of Decision : 08-08-1963

Acts Referred:

General Sales Tax Rules, 1950 — Rule 33(1)

Citation : (1963) KLJ 769

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : K.S. Paripoornan, for the Appellant;

Judgement

M.S. Menon, C.J.—These petitions were heard along with T. R. C. No. 22 of 1962. In the light of our decision in that T. R. C.-which applies with equal force to these cases-the only question that arises for consideration relates to the ambit of rule 33(1) of the General Sales Tax Rules, 1950. Rule 33(1) reads as follows:

If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the license fee has escaped levy in any year, the assessing authority or licensing authority as the case may be, subject to the provisions of sub-rule (2) may at any time within three years next succeeding that to which the tax or license fee relates determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable or levy the license fee in such turnover after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

The petitioner is a dealer in kerosene. It is common ground that he sells the commodity in tins and that the commodity itself is exempt from sales tax. According to the Department the sale of the tins, however, will attract the tax, and we have held that that proposition is correct in T. R. C. No. 22 of 1962.

2. The petitioner had returned a turnover which included the sale price of both

the kerosene and the tins. There was nothing in the returns to alert the department that the turnover given was a composite figure taking in the sale price of kerosene which was exempt from taxation and the sale price of tins which was not so exempt. As a result the exemption was allowed in respect of the whole turnover and no part of it was subjected to assessment.

3. The mistake was discovered and was corrected by the assessing authority under rule 33(1) of the General Sales Tax Rules, 1950. The contention of the petitioner is that as the sale price of the tins was included in the turnover returned by him, rule 33(1) is not attracted and action on the basis of that provision cannot be sustained.

4. There is no doubt that in order to sustain an action under rule 33(1), the whole or a part of the turnover of the business of a dealer should have escaped assessment. According to the petitioner when the whole of the turnover has been specified in the returns filed by him, it cannot be said to be a case of "escaped turnover" but only a case of "escaped assessment;" and the provision as a result will not be available.

5. We cannot find our way to accept this submission. The word "escape" indicates the gaining of freedom, from something, from somebody or from somewhere. The sales tax is a tax on turnover. What escapes in every case will be the whole or part of the turnover; what it escapes from cannot be the turnover itself but the assessment.

6. A part of the turnover-the part relating to the sale of the tins-has escaped assessment in this case. The reasons for the escape may vary from case to case; but that is of no consequence. If the turnover is mentioned in the return, the escape may be due to the stupidity of the assessing authority. If it is not mentioned or so mentioned as not to alert the assessing authority, the escape may be due to the cupidity of the assessee himself. But whatever the reason, if an escape has occurred, it is an escape from assessment, what escapes is the turnover, and rule 33(1) comes into play.

7. A distinction has been made in some cases between "escaped turnover" and "escaped assessment." We consider it unnecessary to examine the subtleties of this distinction.

8. The view we take-that the provisions of rule 33(1) are attracted by the facts of this case-is supported by the decision of this Court in *R. S. Narayana Shenoi v. State of Kerala* ((1961) 12 S. T. C. 665. We are in agreement with that decision.

9. income tax is a tax on income. And section 34 of the Indian income tax Act, 1922, speaks of income which has escaped assessment. As pointed out by Kanga the decisions are to the effect that an income is considered as having escaped assessment within the meaning of section 34 when it has not been charged in the hands of the assessee in the proper assessment year; and that the reason for the failure to charge that income is of no consequence in determining the

applicability of that section. (The Law and Practice of income tax, Fourth Edition, Volume I, page 702). In the light of what is stated above we hold that rule 33(1) is attracted to the facts of this case, that the action taken thereunder is justified and that these T. R. Cs. should be dismissed. Judgment accordingly. No costs.