

(2002) 07 KL CK 0102
In the High Court Of Kerala
Case No : O.P. No. 20517 of 1999 (P)

K.N. Falgunan and Another	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 19

Citation : (2002) 128 STC 297

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : M. Ajay and R. Rajesh, for the Appellant; Khader Kunni, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—Exhibit P6 proceedings of the Sales Tax Officer and exhibit P7 penalty proceedings are under challenge. The petitioner also wants this Court to interfere with the recovery proceedings emanating therefrom. The petitioner was a dealer of Indian-made foreign liquor. For the assessment year 1993-94, on the basis of exhibit P1, the petitioner was subjected to tax liability, by order dated January 9, 1995. Thereafter, a notice u/s 19 had been issued to him suggesting that there was under-assessment since turnover had escaped from the assessment. Notwithstanding the objections of the petitioner, exhibit P6 revised assessment had been passed. A fresh turnover was determined, and the balance tax was demanded along with penal interest. Exhibit P7 was a consequential notice, proposing action u/s 45A of the Sales Tax Act. The submission put in by the learned counsel for the petitioner is that exhibit P6 was issued without authority of law and therefore could not have been enforceable. He also submits that the version of the officer that there was necessity for a revised assessment also was practically wrong, but in view of the question of law that has been urged, I do not intend to go to the merits of the said contention.

2. Reliance is placed by the department on Section 19, as it stood amended on

April 1, 1998. 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 had been under-assessed or assessed at the rate lower than the rate at which it is assessable or any deduction is made wrongly therefrom, the assessing authority, at any time within five years from the expiry of the year to which the tax relates, can proceed to the best of its judgment, to determine the turnover which has escaped assessment. It is submitted that even though the assessment year in respect of the petitioners was 1993-94, this gave power to the department to initiate proceedings, in view of the amendment, as the four-year period prevailing up to that date stood automatically enhanced by one year to five years.

3. In the counter-affidavit, the submissions made are not very precise, as there is reference to amendment of Section 19 from April 1, 1994, but this obviously can only be a mistake. As far as the petitioner is concerned, since the assessment year concerned was 1993-94, his liability for being subjected to a revised assessment u/s 19 had come to a close by March 31, 1998. The amendment of the provision by Finance Act (14 of 1998) has come into force only with effect from April 1, 1998 and not from April 1, 1994. Therefore, by the time the provision was introduced in the statute book, the petitioner's assessment for 1993-94 was out of reach of the department as the four-year period had expired on the date the said amendment was introduced. Therefore, the contention of the petitioner, is to be accepted, that on the strength of amendment, 1998 and Section 19 it is not possible to reopen the assessment in exercise of powers so conferred.

4. Counsel also invited my attention to a decision of the Supreme Court reported in S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company, . The court had occasion to consider almost an identical provision in the Income Tax Act as it then stood. A notice of reassessment or assessment could not be issued against a person deemed to be an agent of a non-resident u/s 43 after the expiry of one year from the end of the assessment year. The section was amended by Section 18 of the Finance Act, 1956 extending the period of limitation to two years from the end of the assessment year. The amendment was given retrospective effect from April 1, 1956. During March, 1957, a notice had been issued to the assessee, in respect of the assessment year, 1954-55. It was opposed, by the assessee as a notice barred by limitation. On the facts of the said case, it was held that the right to commence the proceedings for assessment ended on 31st March, 1956 under the Act and before it was amended. The authority was conferred upon the officer to assess a person as an agent of a foreign party u/s 43 within two years from the end of the assessment year. The amended provision but did not assist him to commence the proceedings even though on the date when the notice was issued it was within the period provided by the amended provision. In other words, the Legislature had given only a limited retrospective operation. The provision had to be read subject to the rule that in the absence of an express provision or clear implication, the Legislature did not intend to attribute the amending provision a greater retrospectivity than was expressly

mentioned nor to authorise the Income Tax Officer to commence the proceedings which before the new Act came into force had by the expiry of the period provided, became barred. Notice therefore was held to be bad.

5. In the present case, the right of the department to proceed against the petitioner u/s 19 had been barred, as on April 1, 1998. Therefore, action could not be taken u/s 19. Consequently exhibit P6 is to be declared as null and void, as was without jurisdiction.

6. Reassessments are therefore hereby set aside as also consequential proceedings for imposition of penalty.

The original petition is allowed in the above terms.

Order on C.M.P. No. 33836 of 1999 in O.P. No. 20517 of 1999 closed.