**(2013) 07 KL CK 0050**

**In the High Court Of Kerala**

**Case No :** R.P. No''s. 443, 444, 445, 446, 447 of 2013

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| Kurian Abraham Pvt. Ltd. | APPELLANT |
| Vs | |
| State of Kerala | RESPONDENT |

**Date of Decision :** 12-07-2013

**Acts Referred:**

**Citation :** (2013) 3 KHC 641 : (2014) 69 VST 413

**Hon'ble Judges :** Thottathil B. Radhakrishnan, J;Babu Mathew P. Joseph, J

**Bench :** Division Bench

**Advocate :** A.K. Jayasankar Nambiar, P. Gopinath, P. Benny Thomas and K. John Mathai, for the Appellant; Bobby John, (Government Pleader), for the Respondent

## Judgement

Thottathil B. Radhakrishnan, J.—These review petitions are filed invoking Section 41(7)(a) of the Kerala General Sales Tax Act, 1963, for short, the ''Act". The gist of the contentions of the review petitioners, as argued by learned Senior Advocate A K. Jayasankar Nambiar, on their behalf, is that the findings and the consequential conclusions arrived at in paragraph No. 4 of the judgment sought to be reviewed cannot be sustained in view of the fact that no such ground was or could have been raised in these revisions filed by the State. It is pointedly argued that in terms of Section 41(1) of the Act, no revision would lie to the High Court except on the ground that the Appellate Tribunal has either decided erroneously or failed to decide on any question of law. It is, accordingly, argued that the consideration and expressions in paragraph No. 4 of the judgment sought to be reviewed were on questions, which were not even raised before the Tribunal, and therefore, there could not have been a plea by the State, in the revisions, that there was a failure to decide on any question of law.

2. Adv. Bobby John, the learned Government Pleader, argued that Section 41(7)(a) provides an application for review only on the basis of discovery of new and important facts, which were not within the knowledge of the applicant or could not be produced by him, when the order was made. He, therefore, says that even if the assertion by the review petitioners is that the High Court had

exercised jurisdiction beyond the terms of Section 41(1) of the Act, that is not a ground to entertain a review in view of Section 41(7)(a) of the Act.

3. Sections 41(1) and 41(7)(a) of the Act are extracted hereunder: 41. Revision by the High Court--(1) Any officer empowered by the Government in this behalf or any other person who objects to an order passed by Appellate Tribunal under sub-section (4) or sub-section (7) of Section 39 may, within ninety days from the date on which a copy of such order is served on him in the manner prescribed, prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law:

Provided that the High Court may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period.

41(7)(a) The High Court may, on the application of any party to a revision under this section, review any order passed by it on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made.

On a plain reading of the above provisions, we find abundant substance in the preliminary objection raised on behalf of the State. We uphold that.

In the result, these review petitions are dismissed without prejudice to other reliefs, if any, as may be available to the parties concerned, in accordance with law. No costs.

 