(1966) 02 KL CK 0005

In the High Court Of Kerala

Case No : O.P. No. 500 of 1965

Misrilal Parasmall APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 21-02-1966

Acts Referred:
General Sales Tax Rules — Rule 33, 33(1)

Citation : (1966) 18 STC 421

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : C.K. Viswanatha Iyer, C. Krishnamoorthy and M.A.T. Pai, for the Appellant; Government Pleader, for the Respondent

Judgement

V.P. Gopalan Nambiyar, J.—This writ petition is to quash the orders exhibits P-3 and P-4 and to restrain the 1st respondent by a writ of prohibition from taking steps for the recovery of the tax. The petitioner is a non-resident dealer having its principal place of business at Bangalore. It is not a registered dealer in the Kerala State. For the year 1957-58, a first notice dated 3rd March, 1960, was issued to the petitioner under the provisions of the General Sales Tax Act, 1125. This was followed by a notice dated 3rd June, 1960, calling upon the petitioner to show cause why it should not be prosecuted for non-registration. The petitioner would appear to have replied that the sales effected by it were only inter-State sales exempt from tax under the General Sales Tax Act, 1125. Best of judgment assessment was made on the petitioner by an order, a copy of which has been produced as exhibit P-1 dated 22nd February, 1961. The petitioner filed an appeal against the said order and the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax by order (exhibit P-2) dated 31st August, 1961, set aside the assessment and remanded the case to the Sales Tax Officer for fresh disposal. After remand the Sales Tax Officer again assessed the petitioner by an order dated 16th January, 1963, a copy of which has been produced as exhibit P-3. An appeal against the said order was dismissed by the order filed as exhibit P-4.

2. In support of the prayer to quash exhibits P-3 and P-4, it was urged that as the notices in respect of the year 1957-58 were issued to the petitioner on 3rd March, 1960, and 3rd June, 1960, the proceedings which ultimately resulted in the assessment of the petitioner amounted to a case of "escaped assessment" and were barred by reason of the provisions of Rule 33 of the General Sales Tax Rules. Rule 33 (1) of the General Sales Tax Rules runs as follows :

33. (1) 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 licensee 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 licensee fee relates determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable or levy the licensee fee in such turnover after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

3. The petitioner''s counsel contended that in so far as the order exhibit P-3 was beyond the time-limit specified in the above rule, the proceedings are illegal and liable to be quashed. In view of the decision of the Supreme Court reported in Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur [1963] 14 S.T.C. 976 there was no controversy before me that the proceedings taken to assess the petitioner by exhibit P-1 and the subsequent orders related to "escaped assessment" within the meaning of Rule 33. But on behalf of the department, it was contended by the learned Government Pleader that Rule 33 has application only to a case of an original assessment or an assessment made suo motu for the first time by the Sales Tax Officer and has no application to an assessment done by the officer in pursuance of, and in obedience to, an order of remand directed by the appellate or revisional authority. In support of this position, reliance was placed on Sections 14, 15, 15A and 15B of the Act and Rules 32(2) and 32A of the Rules; and it was claimed that the rule of harmonious construction required that Rule 33 should be understood in the sense contended for by the Government Pleader, so as to ensure obedience to, and compliance with, the orders of the appellate and revisional authorities. It appears to me that it is no longer open to the learned Government Pleader to construe Rule 33 as contended by him, in view of the two decisions of the Supreme Court reported in The State of Orissa Vs. Dabaki Devi and Others, and Jaipuria Brothers Limited v. State of Uttar Pradesh and Ors. [1965] 16 S.T.C. 494. The Supreme Court has ruled that there can be no assessment or reassessment by the Sales Tax Officer either suo motu or in pursuance of an order of remand by the appellate authority beyond the period of limitation indicated by the provisions of the statute. In the cases before the Supreme Court, the period was indicated by the section of the Act itself. It seems to me to make no difference, that in the present case, the limitation is provided by a statutory rule. Following the principle of the above decisions of the Supreme Court, it must be held that the proceedings evidenced by exhibits P-3 and P-4 are beyond the period indicated by Rule 33 of the

General Sales Tax Rules. If so, there was no argument that the petitioner was not entitled to the relief of quashing these orders.

4. It is unnecessary to deal with the other contention advanced by the petitioner''s counsel, namely that in any event, the revenue recovery proceedings taken in this case are without jurisdiction as the revenue recovery certificates have been issued in favour of the Revenue Recovery Officer, Mysore, and that the same could validly be issued only in favour of the Collector. In view of my conclusion on the main point, I express no opinion on this contention.

5. The O.P. is allowed and exhibits P-3 and P-4 are quashed. There will be no order as to costs.

