

(2008) 08 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24601 of 2007

Mohammed Kunju K.M.

APPELLANT

Vs

Asstt. Commissioner of Comm. Taxes

RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17, 17(6), 17(8), 17A, 18

Citation : (2008) 4 ILR (Ker) 124 : (2008) 3 KLJ 369 : (2008) 4 KLT 157

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Advocate : Arikkat Vijayan Menon, Harisankar V. Menon, Meera V. Menon and Mahesh V. Menon, for the Appellant; C.K. Govindan (GP), for the Respondent

Judgement

K.M. Joseph, J.—The facts of this case as would be revealed in the course of the judgment, would show how the apathy of the officers has culminated in orders being passed with huge delay, which the learned counsel for the petitioner would enlist in support of her contention that it has transformed into a right in favour of the petitioner on the ground of the assessments being barred. The petitioner is the eldest son and one of the legal heirs of one Sri. Mytheen Kunju Sahib. Late Mytheen Kunju Sahib was an assessee under the Kerala General Sales Tax Act. The question relates to the assessment years 1974-75 and 1980-81. Late Mytheen Kunju Sahib passed away on 24.3.1998. The legal heirs of Sri. Mytheen Kunju Sahib received a notice dated 24.1.2003 calling upon the legal heirs, including the petitioner to produce the books of accounts filed before the first respondent. Petitioner has submitted Ext.P1 letter seeking details as to why the books of accounts were being called for. They were informed that the books of accounts of the deceased father were called for. Ext.P2 reply was given requesting for more details. Inquiries were made and the petitioner has found that there assessments made against their late father which were carried in appeal and it resulted in orders of remand being passed for re-doing the assessments. Exts.P3 and P4 are the appellate orders of the Deputy Commissioner of Appeals, Ext.P3 dated 30.3.1982 and Ext.P4 dated 15.9.1989

relate to 1974-75 and 1980-81 respectively. Petitioner by Ext.P5 pointed out that the matter is barred by limitation. They were served with Exts.P6 to P8 pre-assessment notices for the years 1974-75 (KGST and CST) and 1980-81, proposing to complete the assessments on best of his judgment. Petitioner thereupon preferred Ext.P9 objection contending that the assessments are time barred. However, brushing aside the same Exts.P10 to P12 assessment orders were passed. Petitioner challenged the same before the Appellate Tribunal u/s 34(1) first proviso of the KGST Act taking shelter under the judgment of this court in Geo Seafoods Vs. Additional Sales Tax Officer IV and Another, . By Ext.P13 the appeal was not entertained in the light of the subsequent decision of this court reported in Geo Seafoods v. Additional Sales Tax Officer ((2006) 144 STC 553). Ext.P14 is produced as the notice issued under the Revenue Recovery Act. Accordingly, the petitioner challenges Exts.P10 to P12 assessment orders.

2. I heard learned counsel for the petitioner Smt. Meera v. Menon and also the learned Government Pleader.

3. Learned counsel for the petitioner would contend that this is a clear case where the assessments in question are barred by limitations. It is not in dispute that the assessments relate to 1974-75 and 1980-81. The original assessments were completed and against the same the predecessor-in-interest of the petitioner had preferred appeals. They came to be allowed and the matter remitted back by Exts.P3 and P4. The appellate orders are in the years 1982 and 1989 respectively. The respondents were duty bound to complete the assessment in terms of the appellate orders. The respondents did not care to complete the assessments pursuant to the appellate orders. It is her further case that with effect from 1.4.1993 Section 17 was amended and sub sections (6) to (9) were inserted. Section 17(8), which is relevant reads as follows:

Any assessment or reassessment in pursuance of an order of appellate or revisional authority shall be completed within a period of four years from the expiry of the year in which the order was received.

Provided that all such assessments or reassessments pending as on the 1st day of April, 1993 shall be completed on or before the 30th day of September, 1998.

It is therefore a clear case where the assessments should have been completed, even treating the assessments as pending as on 1.4.1993, on or before 30.9.1998, it is contended. In this case the notice calling upon the petitioner and other legal heirs to produce the books of accounts were issued in the year 2003. The impugned assessment orders were passed on 16.9.2003. It is further contended that by no stretch of imagination it could be contended that the assessments were completed within the period fixed.

4. Learned Government Pleader however submitted that the question is covered in favour of the respondents and by virtue of the decision of the Full Bench in Geo Seafood's case. He further submitted that having regard to the clear terms of Section 17A, the contention of the petitioner is without any basis.

5. In order to appreciate the contentions of the parties, to resolve the lis, it is necessary to refer to Section 17A of the Act, which was inserted by Act 20 of 2000 with effect from 1.4.1993. Section 17A reads as follows:

17A. Assessment or reassessment of certain cases treated as pending - Notwithstanding anything contained in Section 17 or section 18, or in any judgment, decree or order of any Court, Tribunal or other authority any assessment or reassessment for any year shall be deemed to have been pending completion if, in the case of original assessment, return or turnover for the year or any period of the year relating to any prior to 1st April, 1993, has been filed or due to be filed subsequent to the 1st day of April, 1993 and/or a notice in the prescribed form had been served upon the dealer and the assessment in respect of which had not been completed and in the case of a reassessment the order of the appellate or revisional authority giving rise of such reassessment had been received and such reassessment has not been completed,

Section 17A came to be substituted by Act 10 of 2005. According to the learned Government Pleader in view of the provisions contained in Section 17A, as far as reassessment in question is concerned, there is no period of limitations. This result, he seeks to arrive at by relying on the wording of Section 17A, which inter alia provides that in the case of a re-assessment, the order of the appellate or revisional authority giving rise to such reassessment had been received and such reassessment has not been completed. A Division Bench of this court in *Geo Sea Foods Vs. Addl. Sales Tax Officer*, has inter alia held as follows:

The time limit of four years for completing the assessments have been fixed by the amendment to the KGST Act, 1963 in 1993. That does not mean that only those assessments which were pending for four years and less could be continued. Prior to the amendment there was no time limit prescribed. The only duty on the part of the Assessing Authority was to complete the proceedings in a reasonable time. Reasonable time can be judged only after looking into the entire facts of the case. Hence it cannot be laid down as a rule of law that proceedings, which have been pending before the Assessing Authority for more than four years prior to 1.4.1993 cannot be continued under the proviso.

In an earlier decision, namely, in *Iswara Bhat Vs. Commissioner of Agricultural Income Tax*, this court took the view that initiation of assessment proceedings and the conclusion of the same should be done within a reasonable time. Apparently it was in this context amendment was introduced. In the above case the court took the view that the assessment has to be completed within a reasonable time and if the assessment was not so done, the assessment could not be legally completed. The judgment in *Geo Sea Food's* case was delivered on 10.11.1999. Section 17A as already noticed was inserted by Act 20 of 2000 but with effect from 1.4.1993. Apparently the reason for the insertion was to deal with the situation created by the judgment of this court in *Geo Sea Food's* case. In other words, the decision in *Geo Sea Food's* case having taken the view apparently following the decision in *Iswara Bhat's* case that assessment has to

be completed within a reasonable period of time, the effect was that the amendment to Section 17 by inserting sub sections (6) to (9) were robbed of their efficacy by throwing a shadow of doubt over the power of the assessing authority to make orders of assessment in respect of matters, which could be said to be pending otherwise as on 1.4.1993. In Geo Sea Foods case, though the issue which was raised in this case did not specifically arise, the court has made observations, which throw considerable light on the issue. It is profitable to refer to paragraph 4, which reads as follows:

Section 17 of the Act did not originally stipulate any period within which the assessments should be completed, as already noted above. The only reference to the time for completion of the assessments at that time was the concept of reasonable time as held by this court in *Iswara Bhat Vs. Commissioner of Agricultural Income Tax*, wherein it was held that initiation of assessment proceedings and conclusion of the same should be within a reasonable time. It was in that background, the Finance Act, 1993 introduced amendments to Section 17 providing that the assessments should be completed within a period of 4 years and as far as the assessments pending as on April 1, 1993, within a period of four years from the date of publication of the Act. Thus the Legislature clearly intended to provide for a period for completing the, assessments, viz., four years from the expiry of the year to which the assessment relates. As there was no such time-limit for completing the assessments and since such a provision was introduced for the first time, it was also clearly provided that all assessments pending as on April 1, 1993 should be completed within four years from the date of publication of the Act. True, going by *Iswara Bhat's* case, the assessments had to be completed within a reasonable time and if not, no assessment had to be completed within a reasonable time and if not, no assessment under the Act could be made at the relevant time. But by the introduction of the Kerala Finance Act, 1993, the Legislature clearly intended to destroy such finality, by the second proviso to Section 17(6), "...all assessments pending as on first day of April, 1993 shall be completed within a period of four years...." The division bench in *Geo Seafood's* case however took the view that in view of *Iswara Bhat's* case the assessments having not been completed within a reasonable time, it cannot be said that such assessments not completed for unreasonably long period can be said to be pending and thus it became unnecessary for the said Bench to go into the challenge on the vires of second proviso to Section 17(6). Since Section 17A has been introduced making it clear that the assessments as on April 1, 1993 shall be deemed to be pending notwithstanding anything contained in the statute or in any judgment or decree or order of any court, Tribunal or other authority, it has become unnecessary for us also to consider the challenge to the second proviso to section 17(6), since the pleading have not been amended.

It is also stated in paragraph 7 as follows: The language used in Section 17A clearly means that notwithstanding anything contained in Section 17 or Section 18 or in any judgment, decree or order of any court or Tribunal or other

authority, assessments for any period prior to April 1, 1993 shall be deemed to be pending and the same could be completed within the permitted time.

It is crucial to notice the wording of Section 17A. Section 17 after the amendment in 1993 and thereafter provides for a time limit for the completion of assessment in various situations. When the matter reaches the assessing authority, in the form of remand by the appellate authority or revisional authority, the period of limitation appears to be fixed under sub section (8) of Section 17A must be read as meaning that there is no period of limitation in respect of matters covered by Section 17A, would in my opinion produce the most unreasonable results apart from a result which is clearly unintended by the phraseology itself. Section 17A has only the effect of deeming that assessments would be pending. It does not provide for a time limit for completing the assessment. The time limit for completion of the assessment is already provided u/s 17. I am of the view that the legislature has not intended a different period of limitation in respect of matters governed by Section 17A. All that the legislature has intended is to remove the obstacle arising from the judgment of this court in Geo Sea Food's case ((2000) 8 KTR 21) and to make matters clear that it is open to the assessing authority in a case which is to be treated as pending under the phraseology in the second proviso to Section 17(6) as it stood prior to the substitution as also in respect of a matter which is remitted back for reconsideration within the meaning of Section 17(8) to proceed to complete the assessment. In other words, all that the legislature intended was to clothe the authority with the power to proceed to complete the assessments in the light of the amendment to Section 17 by insertion of sub sections (6) to (9) to Section 17. It is not in dispute that prior to the insertion of sub sections (6) to (9) there was no period of limitation fixed under the statute for completing the assessment. The legislature wanted to introduce a period of limitation. This is keeping in view of the decisions of this court, including the decision in Iswara Bhat's case that the assessment should be completed within a reasonable period. Apparently taking the view from the judicial decisions and reflecting its value judgment legislature has decided to introduce a time limit which is what is done through the medium of sub sections (6) to (9) to Section 17. In the facts of this case, if the reassessments pursuant to the remand namely, Exts.P3 and P4 had been completed before 30.9.1998, it would not have been afflicted with the vice of bar of limitation. This is for the reason that the proviso to sub section (8) clearly enables the assessing authority to complete the assessments or reassessments pending as on the 1st of April, 1993 on or before 30.9.1998. A question may arise as to what was the need for the legislature to refer to Section 17 also in the non obstante clause contained in Section 17A. This question is also to be answered in view of the employment of the words "assessments pending" or "reassessments pending" in Section 17 as contained in the original second proviso to sub section (6) which instantly was the subject matter in Geo Food's Case as also the proviso to sub section (8) to Section 17. As already noticed, the legislature intended notwithstanding the judgments and notwithstanding the law

declared notwithstanding the judgments and notwithstanding the law declared in the case and also the decision in the first Geo Food's Case, the word "pending" was to bear the meaning which was embedded in Section 17A. Thus the true purport of Section 17A is to treat the assessments or reassessments as pending completion in respect of any period prior to 1st April, 1993. Section 17A, as already noticed does not provide for any period of limitation. It is inconceivable that the legislature which has inserted sub sections (6) to (9) to Section 17 would have taken out the cases covered by Section 17A as beyond the purview of Section 17(6) to (9) and providing the assessing authority the power to assess tax without any period of limitation. Learned counsel for the petitioner also draws my attention to a Division Bench decision of this court in W.A. 278 of 2005 and contends that in somewhat similar situation the contention of the petitioner was upheld. I would think that this is a clear case where the impugned assessment orders are passed far beyond the period of limitation and I am constrained to quash the same.

Accordingly, Exts.P8 to P12 are quashed.