
(2014) 01 KL CK 0054

In the High Court Of Kerala

Case No : W.A. No. 23 of 2014 in Writ Petition (C) . 25654 of 2013

M/s. Kandankutty and Sons

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 39

Citation : (2014) 01 KL CK 0054

Hon'ble Judges : Manjula Chellur, C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : Thomas Abraham and Dr. K.P. Pradeep, for the Appellant; Bobby John Pulikkaparambu, Government Pleader, for the Respondent

Judgement

Manjula Chellur, C.J.—Entire question revolves round whether the appellant herein is not liable to pay court fee and legal benefit fund on the memorandum of cross-objection. Learned Single Judge, based on the decision reported in Sinny Joshy Vs. Kerala Kera Karshaka Sahakarana, opined that even on memorandum of cross-objections, court fee and legal benefit fund is payable. Aggrieved by the same, appellant is before us contending that sub-section (3) of Section 39 of the Kerala General Sales Tax Act clearly indicates, there is vagueness so far as payment of fee on the memorandum of cross-objections. Sub-section (3) of Section 39 of the KGST Act reads as under:

39. Appeal to Appellate Tribunal:--

(1)xx xx xx

(3) The appeal or the memorandum of cross objections shall, be in the prescribed form and shall be verified in the prescribed manner and, in the case of an appeal preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of five hundred rupees.

So far as payment of Legal Benefit Fund, Section 76 of the Kerala Court Fees and

Suits Valuation Act provides how such fund is payable, which reads as under:

76. Legal Benefit Fund.--(1) Notwithstanding anything contained in this Act or any other law for other time being in force, it shall be competent for the Government to levy an additional Court-fee, by notification in the Gazette, in respect of appeals or revisions to tribunals or appellate authorities, other than Civil and Criminal Courts, at a rate not exceeding one per cent of the amount involved in the dispute in cases where it is capable of valuation and in other cases at a rate not exceeding one hundred rupees for each appeal or revision.

2. The argument of learned counsel for the appellant is that the appellant is not liable to pay court fee and legal benefit fund by virtue of sub-section (3) of Section 39 of the KGST Act. Subsection (i) of Section 3 of the Kerala Court Fees and Suits Valuation Act defines "appeal", which includes memorandum of cross-objection as well. The judgment of this Court in Sinny Joshy's case (Supra) is to the effect that whatever applies to appeals so far as court fee etc. is applicable to memorandum of cross-objection. Reading of sub-section (3) of Section 39 of the KGST Act only indicates that whenever an appeal is preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of 700/-. This does not definitely mean that no court fee and legal benefit fund is payable under the Kerala Court Fees and Suits Valuation Act. Whenever an appeal is preferred in the manner described under sub-section (3) of Section 39 of the KGST Act, an additional fee of 700/- deserves to be paid apart from the regular court fee and other fund like legal benefit fund is payable. If at all there is non mentioning of memorandum of cross-objection in the second part of the sub-section, we can very well interpret that if memorandum of cross-objection is filed by any person other than an officer empowered by the Government under sub-section (1), it shall also be accompanied by a fee of 700/-, which is applicable in the case of preferring an appeal. In that view of the matter, we are of the opinion, the judgment rendered in Sinny Joshy's case (Supra), rather supports the view of the learned Single Judge that whatever is applicable to appeal will apply to memorandum of cross-objection as well, including payment of court fee and legal benefit fund.

Accordingly, the Writ Appeal is dismissed. One month period from today is granted for payment of court fee and legal benefit fund payable by the appellant.