(1965) 12 KL CK 0015

In the High Court Of Kerala

Case No : O.P. 657 of 1964

Paramu APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 15-12-1965

Acts Referred:
General Sales Tax Act, 1125 — Section 15

Citation : (1967) 19 STC 138

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : P. Subramanian Potti and S.A. Nagendran, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Govindan Nair, J.—The petitioner was assessed to sales tax. He appealed. During the pendency of the appeal, the General Sales Tax Act, 1125, was repealed by the Kerala General Sales Tax Act, 1963. That Act came into force on 1st April, 1963. Thereafter the appeal was disposed of on 28th August, 1963, and the order was received by the petitioner on 25th October, 1963. On the 15th December of that year he applied to the Deputy Commissioner of Sales Tax for revising the appellate order, presumably invoking Section 15 of the General Sales Tax Act, 1125. The relevant part of Section 15(1) is in these terms :

15. Authorities competent to pass orders in revision.-(1) The Deputy Commissioner may-

(i) suo motu, or

(ii) on application,

call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit.

2. The Deputy Commissioner of Sales Tax by exhibit P-3 order dismissed the revision petition on the ground that he had no competence to deal with it, for under the Kerala General Sales Tax Act, 1963, the Deputy Commissioner was not empowered to revise an order passed in appeal by the Appellate Assistant Commissioner. This view was taken apparently in view of the provision in Section 35 of the Kerala General Sales Tax Act, 1963. That section runs thus :

35. Powers of revision of the Deputy Commissioner suo motu.-(1) The Deputy Commissioner may, of his own motion, call for and examine any order passed or proceedings recorded under this Act by the Inspecting Assistant Commissioner or any officer or authority of rank below that of an Inspecting Assistant Commissioner and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit.

(2) The Deputy Commissioner shall not pass any order under Sub-section (1) if-

(a) the time for appeal against the order has not expired ;

(b) the order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired after the passing of the order referred to therein.

(3) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

3. From the wording of this section, it is clear that the Deputy Commissioner is empowered to revise only the orders passed by the Inspecting Assistant Commissioner or by any officer who is subordinate to the Inspecting Assistant Commissioner. It is not disputed before us that the Appellate Assistant Commissioner is not an authority subordinate to the Inspecting Assistant Commissioner. So it is clear that after the coming into force of the Kerala General Sales Tax Act, 1963, on 1st April, 1963, the Deputy Commissioner has no power to revise an order passed in appeal by the Appellate Assistant Commissioner.

4. Assuming therefore without deciding that a right to get an order revised is a vested right similar to or identical with the right of appeal, the question to be determined is, when the authority or the forum which originally had the power to revise the order has itself been abolished, whether the right to get the order revised will also get destroyed with that. That should be the consequence. This has been ruled by the Supreme Court in the decision in Dajisaheb Mane and Others Vs. Shankar Rao Vithal Rao Mane and Another, . The relevant passage is in paragraph 4 at page 30 which reads thus :

If the Court to which an appeal lies is altogether abolished without any forum substituted in its place for the disposal of pending matters or for the lodgment of appeals, the vested right perishes no doubt.

5. We however do not wish to leave this case without observing that the petitioner could have appealed from the order passed by the Appellate Assistant Commissioner to the Sales Tax Appellate Tribunal. In fact when he moved the revision before the Deputy Commissioner, the time for preferring an appeal had not elapsed, the revision having been taken within two months from the date of communication of the appellate order. And the order passed by the Deputy Commissioner, exhibit P-3, was promptly challenged before this Court. The petitioner, if he is so mined, must seek his remedy before the Appellate Tribunal by preferring an appeal from the order passed by the Appellate Assistant Commissioner. We are sure that if such an appeal is taken and if an application for excusing the delay stating the circumstances under which the delay was caused is moved before the Tribunal, they will consider the pendency of this application as well as the circumstances under which exhibit P-3 order came to be passed arid the peculiar circumstances created by the provisions of the new statute in deciding the question as to whether the appeal should be entertained. Subject to the above observation, we dismiss this petition but without any order as to costs.