
(1973) 03 KL CK 0024

In the High Court Of Kerala

Case No : W.A. No's. 148, 193 and 216 of 1971

P.C. Assankutty

APPELLANT

Vs

The Sales Tax Officer

RESPONDENT

Date of Decision : 12-03-1973

Acts Referred:

General Sales Tax Act, 1963 — Section 21

Citation : (1978) 41 STC 481

Hon'ble Judges : T.C. Raghavan, C.J.;V. Khalid, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T.C. Raghavan, C.J.—The appellants in these three appeals are the six partners of a partnership firm by name Madeena Oil Mills and Industries. The partnership was assessed to sales tax fixing the turnover on the basis of the consumption of electric current for crushing copra. The firm filed O. P. No. 1176 of 1961; and Vaidialingam, J., directed that there should be a test crushing before the consumption of electric current was taken as the basis for fixing the turnover. The judgment was pronounced on 28th June, 1962; still, until 5th September, 1966, the Sales Tax Officer did not take any step to have a test crushing. On 5th September, 1966, he called upon the firm to remit the charges for a test crushing, when the partners of the firm, the firm having been dissolved in the meantime on 3rd December, 1963, filed O. P. No. 3673 of 1968, which was heard by one of us and was allowed quashing the proposed assessment. The said decision is reported as K. Aboo v. Sales Tax Officer 1969 K.L.R. 807. This judgment was pronounced on 24th September, 1968; and, on the same day, the Sales Tax Officer issued notices to the partners of the firm calling upon them to file objections, if any, to the proposed assessments before 2 p. m. the next day. Two days after, on 26th September, the assessments were finalised on the erstwhile partners of the firm ; and in the present writ petitions giving rise to these appeals, the partners have questioned the validity of the said assessments.

Two of the partners filed two writ petitions, one by each; and the other four partners have filed the third writ petition. (One of the four petitioners was the son of a deceased partner.) All these writ petitions were dismissed by a single Judge holding that the present assessments were against persons who were admittedly members of the firm, as the partners were jointly and severally liable for the tax payable by the firm. The learned Judge also directed the petitioners to pay the costs of the revenue. In these appeals, this decision of the single Judge is being challenged.

2. In the earlier decision mentioned by us, viz., *K. Aboo v. Sales Tax Officer* 1969 K.L.R. 807 all the aspects of the case were considered in full detail. The partnership was assessed under the General Sales Tax Act of 1125 ; and by the time the second attempt was made to assess the firm, the partnership was dissolved-once by a deed of dissolution and a second time-the second partnership-by the death of a partner. The full details of the life of the partnership (the first dissolution and the second dissolution) were stated in that decision. It was pointed out, after referring to two decisions of the Supreme Court- *State of Punjab Vs. Jullunder Vegetables Syndicate*, and *Khushi Ram Behari Lal and Co. v. Assessing Authority, Sangrur* [1967] 19 S.T.C. 381 (S.C.) that a partnership could not be assessed after its dissolution. It was argued in that case, basing on Rules 35 to 37 of the General Sales Tax Rules, 1950, framed under the Act of 1125, that the assessment sought to be made was legal and proper. This contention was also rejected ; and we are told that that decision has become final since no appeal was filed against it. This court also pointed out towards the end of the judgment in that case that, to meet the situation, Section 21 of the General Sales Tax Act of 1963 was enacted, which provided that, where any firm was liable to pay any tax, fee or other amount under the Act, the firm and each of the partners of the firm would be jointly and severally liable for such payment. It was further pointed out that, under the Act of 1125, there was no such provision and the said lacuna in the Act could not be filled up by interpreting any provision in the said Act.

3. As we have already indicated, the judgment in that case was pronounced on 24th September, 1968 ; and the impugned notices appear to have been issued on the same day stating that objections should be filed before 2 p. m. the next day. (In one of the cases at least, a contention has been raised before us that even this notice was served on the appellant concerned only on 30th September.) And on 26th September, the impugned assessments appear to have been made on the erstwhile partners of the partnership, which was dissolved prior to the assessments. The simple question for us to consider is whether such assessments on the partners of a dissolved firm could be sustained in law.

4. The counsel for the appellants has drawn our attention to three decisions, two of the Rajasthan High Court and one of the Punjab and Haryana High Court. The decision of the Punjab and Haryana High Court is *Moti Ram Kishore Chand Vs. District Excise and Taxation Officer (Assessing Authority) and Others*, by a single

Judge. The learned Judge has held that a firm which was dissolved could not be assessed to sales tax after its dissolution in respect of its turnover before dissolution under the Punjab General Sales Tax Act, 1948. The reasoning is that there was no provision in the said Act expressly empowering the Assessing Authority to assess a dissolved firm in respect of its turnover before its dissolution. The two decisions of the Rajasthan High Court are *Smt. Shanti Bai v. State* [1968] 21 S.T.C. 458 and *Mst. Jeeyakanwar v. State of Rajasthan* [1968] 21 S.T.C. 461 both Division Bench rulings. In the first of these decisions, the Rajasthan High Court has held that, if a firm stood dissolved, an assessment in respect of the turnover of the firm for a period prior to the dissolution should be made under a particular provision of the Rajasthan Sales Tax Act and not otherwise. In the next case, the aforesaid decision has been followed. The principle followed in this case is that a partnership is an entity for the purpose of taxation and the members of the partnership are different entities and, unless there is special provision for making them liable for the tax of the partnership in the particular Act under which the assessment is sought to be made, there is no liability jointly or otherwise for the partners of the firm to pay the tax due by the partnership. Yet another decision brought to our notice is the Division Bench ruling of the Allahabad High Court in *Rameshwar Oil Mills Vs. Additional Revising Authority, Sales Tax, Varanasi Range and Another*, The Allahabad High Court has held therein that a manufacturer who sold oil manufactured by him would be liable for sales tax on the sale of oil manufactured by him (under the particular Act); but, if the manufacturer was a partnership and the oil was sold by one of the partners after the dissolution of the partnership and after the partner got the oil as his share, the partner would not be liable, since the producer of the oil was the firm, one entity and the seller of the oil was the individual partner, another entity, who would not be a dealer-manufacturer.

5. These decisions clearly indicate that the erstwhile partnership was an entity for the purpose of taxation and for its tax liability, the members thereof will not be liable, unless they are specifically made liable by some provision in the Sales Tax Act. The Government Pleader has conceded that there was no such specific provision in the General Sales Tax Act of 1125 and it was to meet that lacuna that Section 21 of the later Act of 1963 was enacted. Therefore, there is no escape for the revenue in these cases; the partners of the dissolved partnership cannot be assessed in respect of the turnover of the partnership.

6. The appeals are allowed, the decision of the single Judge is set aside and the assessments are quashed. The appellants in all these appeals will get their costs in the appeals; but, in the writ petitions, we direct both the parties to bear their respective costs.