
(1986) 09 KL CK 0008

In the High Court Of Kerala

Case No : T.R.C. No"s. 110 and 111 of 1986

R. Nagarajan and Company

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-09-1986

Acts Referred:

Kerala General Sales Tax Act, 1963 — Item 116

Citation : (1986) 2 ILR (Ker) 259 : (1987) 65 STC 34

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : K.K. Usha, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—In these two revisions, the same assessee is the revision petitioner. He is a dealer in tin sheets, tin plates, etc. According to him, the turnover relating to the said goods can be assessed only under item 3(ii)(i) of the Second Schedule and taxable at 4 per cent to the Kerala General Sales Tax Act. The assessing authority was wrong in holding that the tin sheets and tin plates dealt with by the assessee will fall under item 116 of the First Schedule to the Kerala General Sales Tax Act and can be taxed at 8 per cent. This plea put forth by the assessee was not accepted by the Appellate Assistant Commissioner and also by the Appellate Tribunal. The appeals filed by the assessee were dismissed. The assessee has come up in revisions.

2. The learned counsel for the assessee contended that the Tribunal was in error in holding that the turnover of tin plates and tin sheets, etc., by the assessee, can be taxed at 8 per cent under item 116 of the First Schedule to the Kerala General Sales Tax Act. It was contended that the Tribunal was in error in holding so. It was further contended that the Tribunal ignored the bills and other specimen cuttings of the articles produced at the time of hearing. The complaint is that the Appellate Tribunal was wrong in stating that no evidence was adduced by the assessee-petitioner to Show that the goods will come under item 3(ii)(i)

of the Second Schedule. It was submitted that the Tribunal has decided the question erroneously and even without advertng to the evidence tendered by the assessee.

3. The question, as to whether the turnover relating to tin sheets, tin-plates, etc., dealt with by the assessee, will fall under item 116 of the First Schedule and so taxable at 8 per cent or will fall under item 3(ii)(i) of the Second Schedule and so taxable only at 4 per cent, is a mixed question of fact and law, The Appellate Tribunal has, in its order dated 6th August, 1985, stated that the revision petitioners have not adduced any documentary evidence to come to the conclusion that the item dealt with by the revision petitioner are goods coming under item 3(ii)(i) of the Second Schedule to the Kerala General Sales Tax Act and not goods coming under item 116 of the First Schedule. In this view, the Tribunal further held that there is no evidence before them, either documentary or otherwise, to take a different view than that taken by the first appellate authority and so the turnover relating to tin sheets and tin plates will fall under item 116 of the First Schedule to the Kerala General Sales Tax Act and is taxable at 8 per cent. It is not possible for us to say that on the basis of the findings of the Tribunal, the conclusion arrived at, is, in any way, erroneous. It was for the appellant to adduce proper evidence, whether oral or documentary, to substantiate the plea that the turnover relating to tin sheets, tin plates, etc., dealt with by it, will not fall under item 116 of the First Schedule, but will fall only under item 3(ii)(i) of the Second Schedule to the Kerala General Sales Tax Act. If, as stated by the Appellate Tribunal, no documentary evidence was adduced and there was no material to substantiate the plea, it is not possible to say that the decision of the Appellate Tribunal is, in any way, erroneous. We are of the view that no interference is called for in these two revisions.

4. But counsel for the revision petitioner emphatically argued that the petitioner produced bills and also specimen cuttings of the article sold by him at the time of hearing before the Appellate Tribunal and that the Appellate Tribunal, after perusing the bills and specimen cuttings, returned them to the counsel. Indeed question No. 2 posed for decision of this Court is to the effect, as to whether the Tribunal was justified in coming to the conclusion that no evidence was adduced by the petitioner. Counsel for the revision petitioner also relied upon the reply filed by the assessee, to the pre-assessment notice to contend that even at that stage, evidence was adduced to substantiate the plea. We should state that ordinarily the statement contained in the order passed by the court below or by the Tribunal should be presumed to be correct and this Court cannot evaluate or adjudicate as to whether the statements contained in the order impugned are correct. The Appellate Tribunal states in its order that the revision petitioners have not adduced any further documentary evidence to substantiate their plea. It is not open to us to depart from the above statement and take a different view, without anything more. If, as contended by the counsel for the revision petitioner, the said statement, contained in the order of the Appellate Tribunal, is due to a misapprehension or is a mistake or an error, it is certainly open to the

revision petitioner to file an application before the Appellate Tribunal and invite its attention to rectify the said mistake, and/or to pass appropriate orders thereon. True, the Appellate Tribunal's power to review the order is hedged in by limitations. Even so, we are of the view that if it is shown that a patent mistake or error was committed by the Appellate Tribunal, it is open to it to correct the same. In O.P. No. 9382 of one of us, sitting in single, had occasion to state :

The second respondent-statutory authority has got all powers and duties to pass an effective, proper and valid order. If as a matter of fact exhibit P6. was rendered due to some misapprehension or mistake, as contended before me by the petitioners' counsel, it is open to the petitioners to bring this fact before the second respondent himself by way of appropriate application, so that it can express its views thereon and if the petitioners' plea is entitled to acceptance, render appropriate reliefs also. The second respondent, as a statutory authority, has got inherent powers to set right the mistake committed by it.

We concur with the above observations.

5. No interference is called for in these revisions. These two revisions are dismissed.