

(1992) 07 KL CK 0004
In the High Court Of Kerala
Case No : W.A. No. 1175 of 1991

Rani Savithri

APPELLANT

Vs

Assistant Commissioner and Others

RESPONDENT

Date of Decision : 07-07-1992

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 21, 21A(1), 21A(3), 61
Kerala General Sales Tax Rules, 1963 — Rule 63

Citation : (1992) 07 KL CK 0004

Hon'ble Judges : Viswanatha Iyer, J; L. Manoharan, J

Bench : Division Bench

Advocate : P.H. Sankaranarayana Iyer, for the Appellant; T. Karunakaran Nambiar, Sp. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

L. Manoharan, J.—The main question that calls for determination in this writ appeal is as to the liability of a member of a dissolved firm for the sales tax assessed on pre-dissolution turnover of the firm.

2. Appellant was a partner of the firm S.N. Oil Mills, Alleppey which was registered under the Kerala General Sales Tax Act on 1st April 1971. The partnership was dissolved on 1st April 1976. First Respondent assessed the firm under the Kerala General Sales Tax Act (for short the K.G.S.T. Act) on the return and turnover of the firm for the period 1973-74, 1974-75 and 1975-76, Exts. P-3, P-4 and P-5 respectively are the assessment orders. According to the Appellant the appeal filed by the firm against the assessment for the period 1975-76 was allowed as per Ext. P-8 order and the Government took up the matter in further appeal which is pending before the Sales Tax Appellate Tribunal. While so a certificate for an amount of Rs. 58,861.00 was issued for recovery. Appellant challenged the same in O.P. No. 2767 of 1987-D on the ground that no assessment is possible under K.G.S.T. Act after dissolution of the firm, and that a member of the firm cannot be made personally liable for the tax on such

turnover of the dissolved firm. It was also her case that since no notice was served on her the whole proceeding of assessment is vitiated.

3. Learned Single Judge dismissed the O.P. holding that the Appellant's contention that a dissolved firm cannot be assessed on the pre-dissolution turnover cannot be sustained in view of Section 21A(1) and (3) of the K.G.S.T. Act. This appeal is directed against the judgment of the learned Single Judge.

4. The first point urged by the learned Counsel for the Appellant is that the individual property of the member of the firm cannot be answerable to the tax liability. That the assessment was on the pre-dissolution turnover is not disputed. Learned Counsel relied on the decision in *Ganesh Narayana v. Commercial Tax Officer and Anr.* 40 S.T.C. 400 to contend that such arrears of tax due from the firm cannot be recovered from the personal asset of the partner and that the warrant could be executed against the partners only to the extent of the assets of the firm in their hands. In the said decision itself it is observed that the principle of the Indian Partnership Act making a partner personally liable for the debts of a firm cannot enable recovery of tax unless express provision is made in that behalf in the Act itself. In the decision in *Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishnan and Others*, also it is held that in the absence of a specific provision the partners of the firm cannot be made liable for the tax against the firm. Since Section 21 of the K.G.S.T. Act makes the firm as well as its members jointly and severally liable for the tax the very decisions relied on by the learned Counsel would support the conclusion that the individual property of the partner too can be proceeded against.

5. In the decision in *State of Kerala v. Pareed Pillai* (1991) 83 S.T.C. 377 the firm was assessed under the General Sales Tax Act, 1125 for the years 1958-59 to 1962-63. In spite of the fact that there was no provision in the General Sales Tax Act, 1125, enabling the revenue to proceed against the property of the partners it was held, on repeal of the said, Act since the liability under that Act is the liability under the new Act, the proceedings against personal property of the partners was valid in view of Sections 21 and 61 of the K.G.S.T. Act. We find no force in the said argument of the learned Counsel for the Appellant.

6. Now the next question for consideration is whether the revenue can assess a dissolved firm to tax under the K.G.S.T. Act on the pre-dissolution turnover. In the decision in *State of Punjab Vs. Jullunder Vegetables Syndicate*, the Supreme Court held that, a dissolved firm cannot be assessed to sales tax unless the statute under which the assessment is made authorises the assessment either expressly or by necessary implication. It is also held that a provision imposing a joint and several liability on the dealer and its partners for the payment of tax, penalty or any other amount due under the Act cannot be interpreted as conferring jurisdiction to assess as dissolved firm. In the decision in *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, the scope of Sections 18 and 19(3) of the Bombay Sales Tax Act (3 of 1953) came up for consideration. On an interpretation of the said sections and also after adverting

to State of Punjab Vs. Jullunder Vegetables Syndicate, the Supreme Court held that the provision of Section 19(3) in terms envisages the assessment of a dissolved firm by providing that erstwhile partners of a dissolved firm shall be liable jointly and severally to pay the tax. Section 19(3) of the Bombay Act is quoted in paragraph 34 of the judgment which reads thus:

Where a dealer, liable to pay tax under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable u/s 18, the tax (including any penalty) due from the firm under this Act or under any earlier law, up to the time of dissolution, whether such tax (including any penalty) has been assessed before such dissolution but has remained unpaid, or is assessed after dissolution.

It is further observed in the said decision:

The purpose of Section 19(3) is to make the partners jointly and severally liable even if the firm is assessed to sales tax after its dissolution.

7. Section 21A(3) of the K.G.S.T. Act is similar in terms but more comprehensive, the same reads:

21A. Firm dissolved or business discontinued:

(1) * * * (2) * * * (3) Every person who was, at the time of such discontinuance or dissolution a partner of the firm and the legal representative of any such person who is deceased, shall be jointly and severally liable, for the amount of tax, penalty or other amount payable, and all the provisions of this Act shall apply, so far as may be to any such assessment or direction for payment of penalty or other amount.

In the light of the said decision, it is clear that Section 21A(3) of the K.G.S.T. Act would make the member of a dissolved firm liable for tax on the pre-dissolution turnover of the firm. Thus the contentions of the learned Counsel for the Appellant that, a partner is not personally liable for the liability of the firm and that the partner of a dissolved firm is not liable for the tax on the pre-dissolution turnover are not sustainable.

8. Lastly it was contended by the learned Counsel for the Appellant that the Appellant having been not served with any notice the assessment is vitiated. In support of the said argument the learned Counsel relied on the following observation in Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others, . It reads: "It may perhaps be that in the assessment of a dissolved firm each of the erstwhile partners may have a right to be heard because each of them would be interested in warding off a liability which may fall on them jointly and severally. But that is more a matter of procedure which the assessing authority must adopt in the assessment proceedings in order to give efficacy to the order which may eventually be passed in the proceedings." Section 21A(3) of the K.G.S.T. Act specifically provides that all provisions of the Act shall apply to such assessment also. As per Rule 63 of the K.G.S.T. Rules the service on a

dealer could be effected by giving or tendering the summons or order to such dealer of Manager or Agent also. Since Section 21A(3) of the K.G.S.T. Act not only makes the members of the firm jointly and severally liable for the amount of tax due from a dissolved firm but also provides that the provision of the Act would apply to such assessment or direction for payment or penalty etc. it would be enough, in the circumstance, that notice as contemplated under the K.G.S.T. Act is served. Inasmuch as the Appellant has no case that such service of notice was not effected, we are of the view that steps taken are not vitiated. The learned Single Judge dismissed the original petition without prejudice to statutory right, if any, of the Appellant. We do not find anything to interfere in the judgment of the learned Single Judge and therefore the Writ Appeal is liable to be dismissed.

In the result the appeal fails and the same is dismissed.