(2006) 03 KL CK 0030

In the High Court Of Kerala

Case No : S.T.R. No''s. 109 and 202 of 2004

Sivasankaran Nair APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 39(1), 39(4), 39(7), 41, 41(1)

Citation : (2006) 3 ILR (Ker) 445 : (2006) 3 KLT 804 : (2007) 8 VST 220

Hon'ble Judges : K.S. Radhakrishnan, J;K.M. Joseph, J

Bench : Division Bench

Advocate : K.M. Sathyanatha Menon, for the Appellant; Georgekutty Mathew, Govemment Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—These Revision Petitions were preferred u/s 41 of the Kerala General Sales Tax Act, 1963 against an order passed by the Sales Tax Appellate Tribunal in TA. 1 of 2001 and TA. 2 of 2001 respectively. Learned Government Pleader raised a preliminary objection that these revision petitions are not maintainable since the assessee is challenging the orders passed by the Tribunal dismissing a petition for condonation of delay in filing an appeal before the Tribunal u/s 39(1) of the KGST Act.

2. Petitioner is an assessee on the files of Sales Tax Officer, Nilambur. For disposal of these cases we may refer the facts in STRV. 109 of 2004. Assessment order relates to the year 1995-96. Appeal was preferred before the Tribunal with a petition for condonation of delay of 159 days in filing the appeal. Various reasons were stated by the assessee for condoning the delay. Tribunal found no acceptable reasons and dismissed the petition for condonation of delay and consequently appeal was also dismissed. Same is the case in STRv. 202 of 2004.

3. Question to be decided is whether these revision petitions are maintainable u/s 41 of the KGST Act when the Tribunal dismissed the appeals on the ground of

delay. We may extract the relevant portion of Section 41 for easy reference:

41. Revision by the High Court :-- (1) Any officer empowered by the Government in this behalf or any other person who objects to an order passed by Appellate Tribunal under sub-section (4) or sub-section (7) of Section 39 may, within ninety days from the date on which a copy of such order is served on him in the manner prescribed, prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law:

Provided that the High Court may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period.

It is evident from the above mentioned provision that a revision is maintainable before the High Court only if a person objects to an order passed by Appellate Tribunal under Sub-section (4) or sub-section (7) of Section 39. An order u/s 39(4) can be passed by the Appellate Tribunal only after entertaining an appeal. We may extract the said provision for easy reference.

39(4). In disposing of an appeal, the Appellate Tribunal may after giving the parties a reasonable opportunity of being heard either in person or by a representative-

(a) in the case of an order of assessment or penalty,-

(i) confirm, reduce, enhance or annul the assessment or penalty or both:

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; or

(iii) pass such other orders as it may think fit; or

(b) in the case of any other order, confirm, cancel or vary such order:

Provided that, if the appeal involves a question of law on which the Appellate Tribunal has previously given its decision in another appeal and either a revision petition in the High Court against such decision or an appeal in the Supreme Court against the order of the High Court thereon is pending, the Appellate Tribunal may defer the hearing of the appeal before it, till such revision petition in the High Court or the appeal in the Supreme Court is disposed of.

Tribunal in exercise of powers u/s 39(4) in the case of an order of assessment or penalty can confirm, reduce, enhance or annul the assessment or penalty or both. He can set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed or pass such other orders as it may think fit or in the case of any other order, confirm, cancel or vary such order. Sub-section7(a) enables the appellant or the respondent to apply for review of any order passed by the Appellate Tribunal under sub-section(4) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge or could not be produced by him when the order was made.

4. We are of the view only in those cases where a party is aggrieved by an order passed u/s 39(4) or 39(7)(a) the High Court in exercise of revisional power u/s 41 can entertain the case. So far as this case is concerned Tribunal did not entertain the appeal and dismissed the same on the ground of delay, therefore S.41(1) would not apply. Under such circumstance these tax revision cases are not maintainable and they are accordingly dismissed.

