
(2009) 03 KL CK 0092
In the High Court Of Kerala
Case No : S.T. Rev. No. 26 of 2009

Solar Cashew

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 34(1), 39, 39(1), 39(4), 39(7)

Citation : (2009) 2 KLT 486 : (2010) 28 VST 405

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : S. Santhosh Kumar, for the Appellant; V.K. Shamsudeen, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The revision filed u/s 41(1) of the Kerala General Sales Tax Act, 1963 as against the order of the Tribunal rejecting the appeal for the reason that the petitioner has not remitted the admitted tax before filing the appeal before the first appellate authority against whose orders an appeal was filed before the Tribunal.

2. We have heard counsel for the petitioner and the Government Pleader for the respondent and have gone through the order of the Tribunal.

3. A revision is provided to this Court u/s 41(1) of the KGST Act only against the orders of the Sales Tax Tribunal passed u/s 39(4) or (7) of the Act. The order contemplated u/s 39(4) is one issued on the merits disposing of the appeal by the Tribunal. The order under Sub-section (7) of Section 39 is an order in a review application filed before the Tribunal by either party to review their order in appeal. In this case the petitioner appears to have filed the appeal before the first appellate authority without payment of admitted tax. Consequently the first appellate authority rejected the appeal as one not maintainable by virtue of the third proviso contained in Section 34(1) of the Act. In fact u/s 39 no appeal is

maintainable against the order of the appellate authority declining to entertain an appeal filed before him u/s 34(1) of the Act. When an appeal is filed before the appellate authority, it is the duty of the appellate authority to examine whether the appeal is maintainable which requires verification of payment of tax admitted by the appellant. If there is a dispute as to whether there is payment of admitted tax or not it is for the appellate authority to adjudicate on the same for the purpose of deciding on the maintainability of the appeal. Strangely no appeal is provided to the Tribunal or to any authority under the statute against an order of the appellate authority declining to entertain the appeal for the reason that there is non-payment of admitted tax. Counsel for the petitioner submitted that this is a case where the petitioner after admitting tax in the original return, filed a revised return disputing the tax originally admitted and so much so there is a bona fide dispute about the payment of admitted tax. Of course if the revised return is filed without any bona fides for the purpose of entertaining an appeal without payment of admitted tax it is for the appellate authority to decide as to what is the admitted tax and give an opportunity to the assessee to pay the same so that appeals on genuine disputes are entertained. Strangely in spite of refusal of the appellate authority to pass an adjudication order on the dispute raised by the petitioner about payment of admitted tax, the petitioner has not chosen to contest the same other than by filing an appeal before the Tribunal which is not maintainable because the Tribunal u/s 39(1) of the Act is authorised to entertain an appeal against an order passed by the appellate authority disposing of the appeal on the merits. When the appeal is rejected by the appellate authority as one not maintainable on account of non-payment of admitted tax such order is not an order in appeal and, therefore, no further appeal will lie to the Tribunal u/s 39(1) of the Act. Therefore, the order issued by the Tribunal rejecting the appeal again on the ground of non-payment of admitted tax is not an order u/s 39(4) or (7) of the Act and so much so no revision will lie to this court against the said order of the Tribunal. Probably the remedy that is available to the petitioner was to file a writ petition before this Court challenging the order of the appellate authority rejecting the appeal. We therefore reject the revision as one not maintainable u/s 41(1) of the Act.