(1991) 11 KL CK 0008

In the High Court Of Kerala

Case No : M.F.A. 552 of 1991

Sree Sastha Trading Company — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 08-11-1991

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala General Sales Tax Act, 1963 — Section 34, 36, 37, 39, 46(1)

Citation : (1991) 11 KL CK 0008

Hon'ble Judges : T.V. Ramakrishnan, J;K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : K.G. Balagangadharan, for the Appellant; T. Karunakaran Nambiar, Special Government Pleader, Taxes, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Radhakrishna Menon, J.—Sri T. Karunakaran Nambiar, Special Government Pleader (Taxes), as directed by the court took notice on behalf of the Respondents and argued the case.

2. The Appellants were Abkari Contractors during the year 1986-87. The Intelligence Officer, Kollam, who inspected the premises at Anchal seized some of the records maintained by the Appellants in the course of business and on verification of the same was satisfied that the Appellants have failed to keep true and complete accounts within the meaning of Section 46(1)(c) of the K.G.S.T. Act. The Intelligence Officer thereupon gave the Appellants an option to compound the offence of failure to keep true and complete accounts punishable u/s 46(1)(c) of the K.G.S.T. Act.

3. The Appellants accepted the offer and got the offence compounded as is seen from the proceeding which was under challenge before the second Respondent, the Deputy Commissioner, Sales Tax, Kollam u/s 36. The second Respondent by his order, dated 30th March 1987 allowed the revision and reduced the penalty from Rs. 20,000 to Rs. 5,000. That order of the revisional authority was revised

by the Board of Revenue u/s 37 and passed the order restoring the order of the Intelligence Officer, the 3rd Respondent. That order of the Board of Revenue is under challenge in this appeal.

4. The question arising for consideration is whether the proceedings coming u/s 47 of the K.G.S.T. Act is an order which can be revised u/s 36. The answer depends upon the construction of Sections 47 and 36 of the K.G.S.T. Act. We shall for easy reference reproduce these sections leaving out irrelevant parts:

47. Composition of Offences--(1) The assessing authority or other officer or authority authorised by the Government in this behalf may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence--

(a) Where the offence consists of the evasion of any tax payable under this Act, in addition to the tax so payable, a sum of money equal to the amount of tax so payable subject to a minimum of rupees one hundred and maximum of rupees one lakh; and

(b) in other cases a sum of money not exceeding five thousand rupees:

Provided that the Board of Revenue may by order authorise any Officer to compound the offence under this section on payment of a reduced amount.

36. Power of revision of Deputy Commissioner on application.--(1) Any person objecting to an order passed or proceeding recorded under this Act for which an appeal has not been provided for in Section 34 or Section 39 may, within a period of thirty days from the date on which a copy of the order or proceeding was served on him in the manner prescribed, file an application for revision of such order or proceeding to the. Deputy Commissioner.

The language employed in Section 47 would indicate that the proceeding contemplated thereunder partakes of the character of a compromise between the parties. The section provides that the assessing authority or other officer or authority authorised by the Government in this behalf may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act by way of composition of such offence a sum of money equal to the amount of tax attempted to be evaded subject to a minimum of rupees one hundred and maximum of rupees one lakh, where the offence consists of evasion of any tax (this levy is in addition to the tax payable) and in all other cases a sum of money not exceeding five thousand rupees. The proviso says that the Board can authorise any officer to compound the offence on payment of a reduced amount. These words clearly indicate that the person who has committed or is reasonably suspected of having committed an offence under the Act, can of his free will or volition make an offer for compounding the offence by paying the sum of money contemplated u/s 47. When once this offer is accepted and the dispute is compromised the parities thereto namely the person who has committed the offence or suspected of having committed the offence and the assessing authority or other officer or authority authorised by the Government in that behalf are bound by the said compromise evidenced by the proceedings. The proceeding u/s 47 therefore cannot be said to be an order passed or proceeding recorded within the meaning of Section 36. That that is the intention of the legislature is clear from the opening sentence of Section 36 which reads:

Any person objecting to an order passed or proceeding recorded under this Act....

(emphasis supplied)

The person who Can avail of Section 36 and file a revision must therefore be a person who has a right to object to the order or the proceeding. That means the parties who have entered into an agreement resulting in the compounding of the offence cannot be said to be persons who can object to the order passed or proceeding recorded under the Act. Such persons have no right to file a revision u/s 36 ignoring the compromise they had entered into with the Department and enjoyed the benefit of not being prosecuted under the Act.

5. The Board of Revenue, in our view, therefore has rightly set aside the order of the Deputy Commissioner and restored the order of the Intelligence Officer.

6. The learned Counsel for the Appellants nonetheless submitted that the appeal can be disposed of only after notice to the Respondents. That means the appeal does require admission. In other words this Court has no power to dismiss the appeal in limine We are not impressed by this argument. When a matter comes before the High Court which is a court of record and being a court of record, the High Court has always the power to go into the merits of the case to find out whether the same is sustainable in law. A reference in this connection to Article 227 of the Constitution of India is profitable. The visitorial power, this Court exercises under Article 227, empowers this Court to issue appropriate orders or directions in matters which come before court in the form of appeals revisions or original proceedings even at the admission stage. We therefore are of the view that the above argument is not sustainable.

The appeal fails. Accordingly the same is dismissed