

(2003) 03 KL CK 0099

In the High Court Of Kerala

Case No : T.R.C. No"s. 174 and 177 of 1999

State of Kerala

APPELLANT

Vs

C.M. Meerannan

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17(6), 17(8), 17A

Citation : (2004) 137 STC 304

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : Georgekutty Mathew, Government Pleader, for the Appellant; K.B. Muhamed Kutty and K.M. Firoz, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—The State is the revision petitioner in both these cases. The respondent-assessee is also the same. The assessment years concerned are 1978-79 and 1979-80. The respondent-assessee in fact had stopped the business as early as in 1990 itself. Though the assessee had filed monthly return for one month for the assessment year 1978-79, he did not file any annual return for the two assessment years. No notice calling for annual returns for the aforesaid two years is seen to have been issued. The assessing authority completed the assessment for the two years as ex parte as per order dated October 18, 1997 in both the cases. These assessment orders were confirmed in appeal by the first appellate authority. However, in the second appeals, the Tribunal held that the assessment for both the years are barred by limitation. Hence these revisions by the State.

2. We have heard the learned Government Pleader appearing for the petitioner in both the cases and Dr. K.B. Muhamed Kutty, the learned counsel appearing for the respondent-assessee.

3. The admitted facts are that the assessee did not file any annual returns for the

years 1978 and 1979. The assessment orders do not disclose the filing of the return or the issuance of any notice, other than the notice dated November 6, 1996 and September 6, 1997. The assessment for both the years were completed ex parte on October 18, 1997. Though no period of limitation was provided for completion of the assessment, as per the decision of the division Bench in *Evergreen Fragrances v. State of Kerala* [1993] 90 STC 39 (Ker), the assessment has to be completed within a reasonable time. The reasonable time will depend on the facts and circumstances of each case. Absolutely no reasons are stated for not completing the assessment for the two years till October 18, 1997. More than 18 to 19 years elapsed since the assessment years concerned. No valid explanation is forthcoming for the inordinate delay in making the assessments.

4. According to the assessee, in order that an assessment must be held to be pending, the assessment proceedings must commence either by the filing of a return or by the issue of a notice calling for filing of the return. It is their case that admittedly the assessee had not filed the return and that no notice calling for filing the return was issued by the assessing authority also. Even though the first appellate authority in its order has stated that the assessing authority had initiated action for assessment on January 22, 1982 itself and, the appellant requested for adjournment of the same on February 4, 1982, it does not appear that the notice dated January 22, 1982 was one for filing the return. However, from the order of the Tribunal, it would appear that notice dated January 22, 1982 was one for production of the accounts. The notice for production of the accounts cannot be treated as a notice calling for filing of the return, and it cannot be held that issuance of a notice for production of books will amount commencement of the assessment proceedings. This issue is covered by the decision of this Court. It is unnecessary for us to go into all these ramifications in these two cases, for, the assessing authority had not completed the assessment within a reasonable period. In the instant case, no circumstances have been brought out to show that the assessing authority was prevented from making an assessment at the earliest. In such circumstances, the period of more than five or six years cannot be treated as a reasonable time. As already noted, assessments were completed only on October 18, 1997, after the expiry of more than 18 to 19 years.

5. The learned Government Pleader appearing for the petitioner relied on the provisions of Section 17(6) of the Kerala General Sales Tax Act, 1963 as amended from time to time which enlarges the period of limitation for completion of the assessment in cases where the assessments were pending as on April 1, 1993, and also the provisions of Section 17A which further extends the period of limitation.

6. We have perused the aforesaid provisions, we do not find any application of those provisions to the facts of the present case. This is for the reason that even as on July 29, 1993, more than 12 years have elapsed since the assessment

years under consideration. When assessments are thus barred as beyond the reasonable time, there is no scope for application of the provisions of Sections 17(6), 17A and 17(8) of the Act, as relied on by the Government Pleader.

In the above circumstances, we do not find any reason to interfere with the conclusion reached by the Tribunal. These two tax revision cases are accordingly dismissed.