**(2009) 02 KL CK 0022**

**In the High Court Of Kerala**

**Case No :** S.T. Rev. No. 229 of 2006

| | |
|---|---|
| State of Kerala | APPELLANT |
| Vs | |
| Dr. George Jacob | RESPONDENT |

**Date of Decision :** 11-02-2009

**Acts Referred:**
Kerala General Sales Tax Act, 1963 — Section 17(6), 17(7)

**Citation :** (2009) 26 VST 304

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

**Bench :** Division Bench

**Advocate :** Vinod Chandran, Special Government Pleader Taxes, for the Appellant; R. Ramadas, for the Respondent

## Judgement

C.N. Ramachandran Nair, J.—The question raised in this revision filed by the State is whether the sales tax assessment of the respondent for the year 1998-99 completed on March 22, 2004 is barred by limitation or not. The Tribunal by relying on Section 17(6) of the Kerala General Sales Tax Act, 1963 held that since the time for completion of the assessment is four years from the end of the relevant year, the last date for completion of assessment for 1998-99 was March 31, 2003 and so much so, the Tribunal declared the assessment as time-barred and consequently invalid.

2. We have heard Government Pleader appearing for the petitioner and Sri R. Ramadas, counsel appearing for the respondent. The Government Pleader has relied on annexure AI which is the proceedings issued by the Deputy Commissioner of Commercial Taxes on March 17, 2003 u/s 17(7) of the KGST Act extending the period for assessment for 1998-99 beyond March 31, 2003. According to the Government Pleader, by virtue of the proceedings issued by the Deputy Commissioner the assessment was not barred by limitation. Counsel appearing for the respondent however contended that the proceedings of the Deputy Commissioner produced in this Court was not relied on by the Department before the first appellate authority or before the Tribunal and

consequently the Tribunal had no occasion to consider the same. Besides this, he submitted that no enquiry or crime was pending investigation against the respondent and there was no good or sufficient reason justifying the Commissioner to issue annexure AI order. We agree with the contention of the counsel for the respondent that the respondent cannot be surprised by producing the proceedings of the Deputy Commissioner before this Court for the first time.; However, we find from the order of the first appellate authority that the assessment is sustained by him by referring to the amendment introduced to Section 17(6) with effect from March 31, 2002 and which remained in force till March 31, 2003. It is seen that the Finance Act, 2002 introduced an amendment to Section 17(6), whereby the limitation provided for assessment was five years instead of the usual period of four years and the said provision was in force from March 31, 2002 to March 31, 2003. The question to be considered is whether this amendment will save the assessment of the respondent for the year 1998-99 which was completed beyond the usual period of four years, but within five years from the end of the relevant year. According to the counsel for the respondent the amendment is not applicable for the assessment year 1998-99 and the limitation for that is only for four years. The Government Pleader on the other hand contended that the amendment will be applicable for those assessments which get time-barred on account of expiry of four years between these two dates, i.e., March 31, 2002 and March 31, 2003.

3. We are of the view that, the purpose of making the amendment applicable between the two dates which are the last dates for final orders is to save limitation only for two assessments, i.e., for assessment years 1997-98 and 1998-99, which were getting time-barred under the original provision on March 31, 2002 and March 31, 2003, respectively. In order to extend the time-limit for completion of assessment for these two years by another year, the amendment is brought out, making it effective from March 31, 2002 to March 31, 2003. We therefore hold that the amendment applies for the assessment year 1998-99 and so much so the assessment completed before March 31, 2004 is well within time. The revision is therefore allowed by vacating the order of the Tribunal and by restoring the order of the first appellate authority.

4. In view of the above finding, we do not propose to go into the validity of the proceedings issued by the Deputy Commissioner u/s 17(7) of the KGST Act.

 