

(1979) 01 KL CK 0006
In the High Court Of Kerala
Case No : Writ Appeal No. 239 of 1978

State of Kerala

APPELLANT

Vs

Jayan Medical Store

RESPONDENT

Date of Decision : 01-01-1979

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 19, 19(1), 19(2), 45A

Citation : (1980) 45 STC 156

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; T. Chandrasekhara Menon, J

Bench : Division Bench

Advocate : The Government Pleader, for the Appellant; C.T. Peter, V.M. Kurien, E.M. Sadrul Anam and T.C. Karunakaran, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, C.J.—The judgement of the learned Judge has to be affirmed. The learned Judge allowed the writ petition and quashed exhibit P-7 order imposing penalty on the writ petitioner on the ground that the penalty had been imposed beyond the time indicated by the provisions of Section 19 of the Act. We think that this conclusion of the learned Judge is correct. In view of this, we think it unnecessary to consider the other point debated before us, namely, whether the time-limit indicated by Section 19 of the Kerala General Sales Tax Act for taking action is a period of limitation or a jurisdictional condition.

2. The original assessment to sales tax for the assessment year 1967-68 was on 27th July, 1968. The assessment was reopened u/s 19(1) of the Act and a fresh order of assessment has been passed on 4th March, 1972, under, Section 19(1) of the Act. On the same day, an order imposing penalty was passed u/s 19(2) of the Act. The order imposing the penalty was challenged in O. P. No. 2021 of 1972 of this Court, which was allowed on the ground of violation of the principles of natural justice as there was no notice to the assessee. That was by judgment dated 8th November, 1973. The order reopening the assessment was also carried up in appeal. The appeal was partly allowed by deleting a part of the turnover

added. The appellate order was dated 26th April, 1974. In pursuance of this order on appeal, a revised order of assessment was passed by the Sales Tax Officer on 19th September, 1974. Thereafter, a notice or a fresh notice for imposition of penalty was issued on 14th November, 1974, followed by a further clarificatory notice (exhibit P-6) dated 25th November, 1975. This resulted in the impugned order of imposition of penalty (exhibit P-7).

3. Section 19 of the Act reads as follows:

19. Assessment of escaped turnover. -- Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable, or any deduction has been wrongly made therefrom, the assessing authority may, at any time within four years from the expiry of the year to which the tax relates, proceed to determine to the best of its judgment the turnover which has escaped assessment to tax or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction that has been wrongly made and assess the tax payable on such turnover after issuing a notice on the dealer and after making such enquiry as it may consider necessary:

Provided that before making an assessment under this sub-section the dealer shall be given a reasonable opportunity of being heard.

(2) In making an assessment under Sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to wilful nondisclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under Sub-section (1), a penalty as provided in Section 45A:

Provided that no such penalty shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

Explanation. -- Notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proving that the escape from assessment was not due to wilful non-disclosure of assessable turnover by the dealer shall be on the dealer.

(3) The powers under Sub-section (1) may be exercised by the assessing authority even though the original order of assessment, if any, passed in the matter, has been the subject-matter of an appeal or revision.

(4) In computing the period of limitation for the purposes of this section, the time during which the proceedings for assessment remained stayed under the orders of a civil court or other competent authority shall be excluded.

4. From Section 19(1), it is clear that the time-limit indicated therein of four years from the expiry of the year to which the tax relates is for proceeding to determine the turnover which has escaped. Once the initiation of the proceedings has thus been made within the time-limit indicated, there is no bar to fetter the

further action or to allow it to run to its conclusion. Subsection (2) requires that the imposition of penalty must be "in making the assessment under Sub-section (1)". From the point of view of this requirement, if we examine the facts disclosed, we find that the assessment had been completed by the appellate order dated 26th April, 1974, and, certainly, by the revised order of the Sales Tax Officer in pursuance of the said order, on 19th September, 1974. The notice for imposition of the penalty was issued only on 14th November, 1974, after the termination of the assessment proceedings. It cannot be said, in the circumstances, that the proceedings for imposition of the penalty were "in making an assessment" as required by Sub-section (2) of Section 19 of the Act. In this view, the judgment of the learned Judge is right. We affirm the same and dismiss this writ appeal with no order as to costs.