(1991) 02 MAD CK 0058

In the Madras High Court

Case No : Tax Case No. 898 of 1981

State of Tamil Nadu APPELLANT

Vs

Sree Gounder and Co. RESPONDENT

Date of Decision : 20-02-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 36(6)

Citation : (1991) 02 MAD CK 0058

Hon'ble Judges : A.S. Anand, C.J;Raju, J

Bench : Division Bench

Advocate : R. Karuppan, Additional Government Pleader, for the Appellant; N. Inbarajan, for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The respondent is the assessee, a dealer in grams. Both before the assessing authority as well as before the Appellate Assistant Commissioner of Commercial Taxes, Pollachi and the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, the contention of the assessee that fried grams fell under the category of declared goods and, therefore, the sale turnover of the same could not be included in the total turnover for the purpose of levy of additional sales tax failed. It was held by all the three statutory authorities that fried grams could not be treated as declared goods as they were different from grams. Thus holding that fried grams did not fall under item 6(a) of the Second Schedule, the turnover relating to the same was taken as part of the total turnover for the purpose of levy of additional sales tax. After the assessee failed before the Tribunal vide order of the Tribunal dated 21st March, 1980, it appears that the assessee filed a review petition u/s 36(6)(a) of the Tamil Nadu General Sales Tax Act, 1959, seeking a review of the order of the Tribunal dated 21st March, 1980 in C.T.A. No. 504 of 1979. It was asserted on behalf of the assessee before the Tribunal that after the order of the Tribunal dated 21st March, 1980, the assessee came across a judgment of the High Court wherein a view had been taken which ran contra to the view of the authorities as regards fried grams not being declared goods. The judgment of the High Court was rendered in S.K.

Nataraja Mudaliar and Co. Vs. The State of Tamil Nadu and Another, . The Tribunal took note of the judgment and reviewed the earlier judgment and held that fried grams were declared goods falling under item 6(a) of the Second Schedule. The Revenue is aggrieved and has come up in revision.

2. The short question that has been raised before us by the learned Additional Government Pleader (Taxes) in this revision petition relates to the scope of the power of review u/s 36(6)(a) of the Tamil Nadu General Sales Tax Act. It is submitted that the power of review could not be utilised to set at naught the earlier order of the Tribunal only on the ground that a judgment had been rendered subsequently by the High Court taking a view which was contra to the view of the Tribunal. In support of this submission, the learned Government Pleader relies upon the judgment in Gollapudi Suryanarayana Chetty Vs. State of Tamil Nadu, .

3. Section 36(6)(a) of the Tamil Nadu General Sales Tax Act reads as follows :

"The appellate or the respondent may apply for review of any order passed by the Appellate Tribunal under sub-section (3) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge or could not be produced by him when the order was made :

Provided that no such application shall be preferred more than once in respect of the same order."

A Division Bench of this Court in Gollapudi Suryanarayana Chetty v. State of Tamil Nadu [1980] 45 STC 227 considered the ambit and scope of the powers of review and held that a review u/s 36(6)(a) of the Act could be filed only where new and important facts were discovered by the assessee and such facts could not have been available to the assessee or were not within his knowledge prior to the disposal of the appeal by the Tribunal. The Division Bench specifically held that a subsequent decision of the High Court could not be treated to be such a "new and important fact" so as to entitle the exercise of the power of review u/s 36(6)(a) of the Act. That judgment, with which we agree, is fully applicable to the facts of this case. Since, review of the earlier order was made only on the basis of a subsequent decision of the High Court and not on discovery of any new or important fact not available to the assessee or within his knowledge prior to the disposal of the case, the Tribunal fell in error in exercising the powers of review.

4. Apart from the judgment in Gollapudi Suryanarayana Chetty Vs. State of Tamil Nadu, we find that since review is a creature of statute, the power of review can be exercised only within the parameters fixed by the statute itself and not on general principles. On the basis of the provisions of section 36(6)(a) of the Act it can be said that the grounds for review are limited and it is not permissible to extend those grounds beyond what has been clearly and specifically provided by the Legislature in the section itself. A review petition cannot be converted into an appeal in disguise. Power of review has to be exercised sparingly and strictly in

accordance with the statute authorising review within the parameters set out by the statute itself. Considered in this light, it becomes apparent that the Tribunal did not exercise the power of review in accordance with the parameters and limitations set out in section 36(6)(a) of the Act. The conclusion is, therefore, irresistible that the Tribunal fell in error in reviewing its earlier order only on the basis of a later judgment of a High Court being brought to its notice. The order of the Tribunal dated 20th August, 1980, therefore cannot be sustained. It is hereby set aside. The revision petition consequently succeeds and is allowed. The order of the Tribunal dated 21st of March, 1980, is restored.

5. Petition allowed.