(1971) 09 SC CK 0079

In the Supreme Court Of India

Case No : Civil Appeals Nos. 339-341 Of 1969

The State of Kerala APPELLANT

Vs

Moolji Vissanji RESPONDENT

Date of Decision : 13-09-1971

Acts Referred:

Citation : (1972) 4 SCC 442

Hon'ble Judges : K. S. Hegde, J;A. N. Grover, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. HEGDE, J.-These appeals by certificate raise a common question of law. We shall refer to that question presently. The respondent-assessee was assessed to sales tax for the years 1957-58, 1958-59 and 1959-60 in February, 1961. At the time of the said assessment, he was granted certain exemptions by the Sales Tax Officer. On an examination of the records, the Deputy Commissioner of Sales Tax came to the conclusion that the exemptions granted by the Sales Tax Officer were impermissible under law. Therefore he started suo moto revision proceedings sometimes in 1963. After giving an opportunity to the assessee to represent his case, he revised the order of assessment by his order, dated May 20, 1965. That order was challenged by the assessee before the Sales Tax Appellate Tribunal. The Sales Tax Appellate Tribunal opined that the Deputy Commissioner of Sales Tax revised the order of assessment in exercise of his power under Rule 33 of the Rules framed under the Kerala Sales Tax Act of 1125. Following the decision of the Kerala High Court reported in 1965 K.L.T.p. 1167, he set aside the order of the Deputy Commissioner on the ground that the proceedings were initiated beyond time.

2. Aggrieved by the order of the Tribunal, the State of Kerala took up the matter in revision to the High Court of Kerala. The High Court dismissed the revision petition with the following observations:

"In the light of the decision of the Supreme Court in 16 STC 231, and of this Court in 1965 K.L.T. 1167, this T.R.C. has to be dismissed. It is dismissed accordingly; No costs."

3. The decision of the Kerala High Court in State of Kerala v. K.E. Nainan1 was overruled by this Court in State of Kerala v. K.E. Nainan2 and the decision of this Court in State of Mysore v. Yaddalam Lakshminarasimhiah Setty & Sons3 is no more good in view of the amendments with retrospective effect made later to the relevant provisions. See the decision of this Court in State of Kerala v.P.P. Joseph & Co. and Joseph Elias4. Hence the decision of the High Court cannot be upheld.

4. Counsel for the respondent-assessee contends that the order of the Deputy Commissioner is not valid as the same was made beyond the time fixed by Section 35 of the Kerala Central (Sales Tax) Act, 1963. This contention was not taken either before the Tribunal or before the High Court. Council for the assessee further contends that the other points that were urged before the Tribunal were neither points that were urged before the Tribunal were neither considered by the Tribunal nor by the High Court in view of their conclusion that the revision proceeding was barred by limitation for the reasons mentioned by them. It is open to the assessee to urge before the High Court those contentions.

5. For the reasons mentioned earlier, these appeals are allowed, the order of the High Court set aside and the cases remitted to that Court for disposal according to law. Under the circumstances of the case, we direct the parties to bear their own costs in this Court.