

(1978) 04 KL CK 0009
In the High Court Of Kerala
Case No : T.R.C. No. 28 of 1976

Tirur Medical Stores

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-04-1978

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17, 19, 19(1)

Citation : (1978) 2 ILR (Ker) 24 : (1978) 42 STC 118

Hon'ble Judges : T. Kochu Thommen, J; P. Subramonian Poti, J

Bench : Division Bench

Advocate : K.V.R. Shenoj, P.K. Kurien, K.A. Nayar and P. Balachandran, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Kochu Thommen, J.—The petitioner in this tax revision case is an assessee under the Kerala General Sales Tax Act, 1963 (the "Act"). The tax relates to the year 1968-69. The question raised by the assessee is whether the Appellate Tribunal was right in holding that the revised assessment dated 23rd November, 1973, made u/s 19 of the Act was not time-barred.

2. The original assessment u/s 17 was made on 30th April, 1970. Subsequently, notices dated 15th February, 1973 and 6th March, 1973, were issued to the assessee in terms of Section 19. The assessee filed its objections on 20th March, 1973. Rejecting the objections, a revised order of assessment in respect of the escaped turnover for the year 1968-69 was made by the Sales Tax Officer on 21st March, 1973. This order was challenged by the assessee before the Appellate Assistant Commissioner who by his order dated 29th May, 1973, held that the assessee was not accorded a proper opportunity of being heard. The order challenged was accordingly set aside and the Sales Tax Officer was directed to pass a fresh order. Notice dated 27th August, 1973, was thereupon issued to the assessee. The assessee replied to the notice on 28th September, 1973, raising various objections. One of the principal objections was that the assessee

was not given an effective opportunity of being heard as directed by the order of remand. A revised order of assessment was made by the Sales Tax Officer on 23rd November, 1973. This order was also challenged by the assessee contending that, notwithstanding the earlier direction in the order of remand, no effective opportunity was given to it and the second revised order was also invalid. The contention regarding lack of proper opportunity was accepted by the Appellate Assistant Commissioner who by his order dated 10th May, 1974, once again remanded the case to the Sales Tax Officer for fresh disposal in compliance with his direction regarding natural justice. This order of remand by the Appellate Assistant Commissioner was however challenged by the assessee in appeal before the Kerala Sales Tax Appellate Tribunal. The principal contention of the assessee before the Tribunal was that the revised order of assessment dated 23rd November, 1973, was time-barred and, consequently, the order of remand dated 10th May, 1974, made by the Appellate Assistant Commissioner was invalid. In the present proceedings, we are concerned only with this objection.

3. Relying upon the decision in *The Sales Tax Officer and Another Vs. Sudarsanam Iyengar and Sons*, the Tribunal held that the revised order of assessment dated 23rd November, 1973, was not time-barred and that the order of remand dated 10th May, 1974, could not be said to be invalid on that score.

4. As we stated earlier, the assessment order u/s 17 was made on 30th April, 1970. An assessment u/s 19 in respect of escaped turnover has to be made within 4 years from the expiry of the year to which the tax relates. Sub-section (1) of the section provides that at any time within that period the assessing authority may

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.

Accordingly the year to which the tax relates being 1968-69, the 4-year period mentioned u/s 19(1) expired on 31st March, 1973. According to the assessee, the revised order of assessment dated 23rd November, 1973, is therefore hopelessly out of time. We do not think so for a moment.

5. As stated earlier two notices u/s 19 were issued on 15th February, 1973 and 6th March, 1973, respectively. With those notices the proceedings u/s 19 commenced. The subsequent orders referred to earlier were a continuation of the proceedings which commenced with the notices. Once proceedings have commenced within the time stipulated-which in the present case is not disputed-the proceedings can validly continue until a final order is made. The fact that the final order was made after the expiry of the period of limitation does not affect

the validity of that order if the proceedings which culminated in the final order commenced within the 4-year period. That this is the correct position can no longer be in dispute in view of the observations of the Supreme Court in *The Sales Tax Officer and Another Vs. Sudarsanam Iyengar and Sons*, That case related to Rule 33 of the Travancore-Cochin General Sales Tax Rules, 1950, which was as follows :

Rule 33. (1) If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to tax in any year or if the license fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, subject to the provisions of Sub-rule (2) may at any time within three years next succeeding that to which the tax or license fee relates determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable or levy the license fee in such turnover after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

(2)...

(italics supplied.)

The Supreme Court in that case rejected the contention of the assessee that *State of Punjab v. Murlidhar Mahabir Parshad* [1968] 21 S.T.C. 29 (S.C.) *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, and *State of Punjab and Others Vs. Tara Chand Lajpat Rai*, which were cited for the department, had no application to the interpretation of Rule 33(1), as the relevant enactments in those cases used the expression "proceed to assess" whereas Rule 33(1) used the expression "assess" and not "proceed to assess". It was contended by the assessee in *The Sales Tax Officer and Another Vs. Sudarsanam Iyengar and Sons*, that the expression "proceed to assess" was not the same as "assess" and, therefore, unlike in the cases cited for the department, the assessment under Rule 33(1) had to be completed within the period of limitation. This contention was totally rejected by the Supreme Court. The court said that the expression "assessment" was comprehensive enough to denote the entirety of the proceedings taken in respect of it. The ambit of that expression could not be limited to a final order of assessment.

6. Section 19 of the Act says:

...proceed to determine to the best of its judgment the turnover which has escaped assessment to tax...and assess the tax payable on such turnover after issuing a notice on the dealer...

This means that the assessing authority has to proceed to determine, in the sense that proceedings for the determination of the escaped turnover, must commence within the period stipulated and "assess", using that expression in the wider sense given to it by the Supreme Court so as to include the proceedings leading to the final order of assessment. It does not matter that the final order

itself was passed beyond the stipulated period of four years. In the present case, the proceedings commenced well within time, although the revised order was passed out of time. But that by itself does not affect its validity. In the circumstances, we see no merits in the tax revision case and it is dismissed with costs. Counsel's fee Rs. 150.