

(2003) 08 KL CK 0039
In the High Court Of Kerala
Case No : W.A. No. 765 of 1999

Vikrant Tyres Ltd.

APPELLANT

Vs

Assistant Commissioner (Assessment) II

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17(8), 2(30)

Citation : (2003) 3 KLT 822

Hon'ble Judges : K.A. Abdul Gafoor, J;J.M. James, J

Bench : Division Bench

Advocate : Pathrose Mathai and Saji Varghese, for the Appellant; S. Soman, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—Undisputed facts are as follows. There was an assessment against the appellant for the sales tax for the year 1987-88. Disputing the assessment, the appellant took up the matter before the higher authorities. Finally, the Appellate Tribunal, the Kerala Sales Tax Appellate Tribunal, as per Ext.P1 order dated 21.3.1994 set aside the assessment and remanded the matter for fresh disposal to the assessing officer. The Appellate Tribunal did not specify any period for completion of assessment afresh. This order of the Appellate Tribunal was received by the assessing officer on 22.7.1994. The Assessing Officer, pursuant to Ext.P1, completed the assessment proceedings on 13.1.1999. There is agreement on both sides to these facts.

2. Whether the assessment so completed on 13.1.1999 was beyond the period of limitation provided for in Section 17(8) of the Kerala General Sales Tax Act, 1963 is the issue involved in the appeal. Learned Single Judge found that it was within the time limit. It is contended by the appellant that it is not beyond the time limit.

3. The relevant provision in 17(8) of the Act as it then stood reads as follows:

"Any assessment or reassessment in pursuance of an order of appellate or

revisional authority shall, unless a period is specified in the order, be completed within a period of four years from the date of receipt of that order".

No period has been mentioned in the appellate order. The appellate order was received on 22.7.1994. Fresh assessment order was passed only on 13.1.1999 even admittedly by the respondents. Therefore, this is beyond the period of four years, it is contended by the appellant.

4. An amendment was effected to Sub-section (8) of Section 17 with effect from 1.4.1997. It is as follows:

"Any assessment or reassessment in pursuance of an order of appellate or revisional authority shall be completed within a period of four years from the expiry of the year in which the order was received."

On the date of this amendment, the reassessment was pending. The period of limitation has to be computed from the expiry of the year in which the order was received by the authority concerned. Therefore, the "year" made mention of there will be "financial year", based on the definition of the term "year" as contained in Section 2(30). The context requires such a meaning.

5. The reassessment proceedings were pending from 22.7.1994. It was in the meantime, Act 10/97 was enforced with effect from 1.4.1997 amending Sub-section (8) as mentioned above making the period of limitation four years from the expiry of the year in which the order was received. It will be applicable to pending proceedings. Thus, it cannot be taken that the assessment was beyond the period of limitation because, the order was received on 22.7.1994, in the financial year 1994-95 which expired on 31.3.1995. Four years from 1.4.1994 will expire only on 31.3.1999, whereas the reassessment was completed on 13.1.1999. Therefore, because of the intervening amendment effect by Act 10/97 to be effective from 1.4.1997, it cannot be contended that the assessment was beyond the period of limitation provided for.

Writ Appeal fails, dismissed.