

(2012) 10 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeal No. 7221 of 2012 (Arising out of SLP (Civil) No. 1832 of 2010)

V.K. Sreedharan and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Kerala Abkari Act, 1077 — Section 18A, 25A, 29

Kerala Abkari Shops (Disposal in Auction) Rules, 1974 — Rule 6(25A), 6(5)

Citation : (2012) 10 JT 39 : (2013) 1 RCR(Civil) 217 : (2012) 9 SCALE 751 : (2012) 10 SCC 485

Hon'ble Judges : K.S. Panicker Radhakrishnan, J; Dipak Misra, J

Bench : Division Bench

Advocate : Dileep Pillai, Ajay K. Jain, Mohd. Sadique T.A. and M.P. Vinod, for the Appellant; M.T. George, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Panicker Radhakrishnan, J.—Leave granted.

2. The Government of Kerala in exercise of the powers conferred under Sections 18A and 29 of the Abkari Act 1 of 1077 amended the Kerala Abkari Shops (Disposal in auction) Rules, 1974 and issued notification G.O. (M.S.) No. 31/74/TD dated 28th February 1974, published vide the Gazette Notification No. G.O. (P) No. 88/2000/TD dated 2nd June, 2000, incorporating Rule 6 after Sub-rule (5) of the following sub rule, which reads as follows:

25A. Reduction of interest in certain cases -

(i) Notwithstanding anything contained in this rule or any other rules made under the Abkari Act 1 of 1077 or in any judgment, decree or order of any court, the person who are in arrears to pay rentals, taxes, duties or other amounts under this rule as on 31st Day of March 1997 shall be entitled to a reduction of Seventy five per cent of the amount of interest accrued on such rentals, taxes, duties or

other amounts as the case may be,

Provided that the entire arrears of rentals, taxes, duties or other amounts with the reduced interest shall be paid on or before the 31st day of August, 2000;

Provided further that the maximum interest payable after allowing the reduction mentioned above shall be limited to one hundred per cent of the principal amount of rentals, taxes, duties or other amounts outstanding as arrears.

3. Claiming the benefit of the above-mentioned provision, the Appellants approached the learned Single Judge of the High Court of Kerala. It was pointed out that though the above-mentioned notification was published in the Gazette on 3.6.2000, the effect of Section 25A would be from 31.7.1997. It was also submitted before the learned Single Judge that the Appellants, even though remitted the entire amount on 4.4.1998 i.e. after the cutoff date mentioned in Section 25A, the state of affairs prevalent as on 31.3.1997 would govern the rights of parties for refund of the amounts. Consequently, it was contended that the Appellants are entitled to get refund of the amount. The learned Single Judge allowed the writ petition and passed the following order:

By Ext. P8, the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 were amended inserting Section 25A whereby those persons who had arrears to pay rentals, taxes, duties or other amounts under those rules as on 31.3.1997 were entitled to a reduction of 75% of the amount of interest accrued on such rentals, taxes, duties or other amounts as the case may be. Though Ext. P8 is issued only on 2.6.2000 and published in the gazette on 3.6.2000, the effect of Section 25A is on the basis of the state of affairs as on 31.3.1997. Admittedly, the Petitioner made the remittance only on 4.4.1998, that is, after the cutoff date in terms of Section 25A. He is, therefore, entitled to the benefit of Section 25A in relation to the arrear that was outstanding as on 31.3.1997. It is so declared. The impugned orders shall stand modified accordingly and the Excise Commissioner is directed to have the outstanding worked out on the basis of the declaration contained in this judgment and have a demand issued to the Petitioner for any outstanding balance, within an outer limit of three months from the date of receipt of a copy of this judgment.

4. Aggrieved by the same the State filed Writ Appeal No. 1005 of 2008 before the Division Bench and the Division Bench allowed the appeal and set aside the order of the learned Single Judge against which this appeal has been preferred.

5. Learned Counsel appearing for the Appellants submitted that the Appellants are entitled to the benefit of remission provided in the notification dated 2.6.2000 by which Section 25A was inserted. It was stated that newly introduced provision providing for remission specifically referred to the arrears benefit of 31.3.1997. Admittedly, it was pointed out that the Appellants were in default on 31.3.1997 and the arrears were paid on 15.12.1997 and 17.11.1998. It was also submitted that the learned Single Judge rightly directed the refund of the amount in view of Section 25A. Shri M.T. George, Learned Counsel appearing for

the State submitted that the Appellants are not entitled to get the benefit of Section 25A since they were not on default as on 31.6.2000.

6. We notice that sub-rule in the Abkari Shops (Disposal in Auction) Rules, 1974 was intended to be applied to those who were in arrears as on 31.3.1997 and continues as such in arrears till the publication of the notification on 3.6.2000. Persons who fall in that category were entitled to get an option to avail of the benefit of the above-mentioned provision by clearing the entire arrears on or before 31.8.2000. The provision is not intended to confer any option to those who have already cleared the arrears before coming into force of the provisions which were given effect only from 3.6.2000. Sub-rule 25A(i) has not extended the benefit of that rule to those persons who had already cleared their arrears between 31.3.1997 and 3.6.2000. Facts will indicate that the Appellant had cleared the arrear amount on 17.11.1998 and Clause (ii) and (iii) of the sub-rule would make it clear that the rule is meant only to benefit those persons who remained as defaulters as on 3.6.2000.

7. We, therefore, find no error in the view expressed by the Division Bench. Therefore, this appeal is dismissed, with no order as to costs.