

(2006) 08 KL CK 0089
In the High Court Of Kerala
Case No : S.T. Rev. No. 76 of 2004

West Cost Industrial Gases Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17(8), 19, 19(1), 34(4), 35

Citation : (2007) 10 VST 773

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : S.K. Devi, M. Raj Mohan, Santosh P. Abraham, Frankur D. Jayan and Deepsur D. Jayan, for the Appellant; V.V. Asokan, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether the assessing officer in the course of revision of assessment pursuant to orders in appeal can rectify the rate of tax applied in original assessment beyond the period of limitation provided u/s 19(1) and Section 43(1) of the Kerala General Sales Tax Act, 1963. The original assessment of the petitioner for the year 1987-88 was subject-matter of appeal and the appellate authority vide order dated April 20, 1995 directed modification of assessment in respect of some of the issues raised and allowed the appeal in part. In the course of revising the assessment in terms of the appellate order, the assessing officer noticed that the rate of tax applied in original assessment on the sales turnover of industrial gases from July 1, 1987 was seven per cent as against the applicable rate of eight per cent. Therefore, notice was issued to the petitioner for modification of assessment in the course of giving effect to the appellate order increasing rate of tax from seven per cent to eight per cent for sales turnover of industrial gases after July 1, 1987. The assessee did not file any objection and therefore, the assessing officer while giving effect to the appellate order increased the rate of tax on industrial gases

sold after July 1, 1987 to eight per cent as against seven per cent originally assessed. The appeal filed by the petitioner at two levels were unsuccessful and therefore, the matter is taken to this Court in revision proceedings against the order of the Tribunal.

2. We have heard counsel for the petitioner and the Special Government Pleader appearing for the respondent. It is conceded that rate of tax on industrial gases was not an issue raised in the appeal filed against assessment by the petitioner and the direction contained in the appellate order dated April 20, 1995 does not cover rate of tax. The question therefore is whether in the course of giving effect to the appellate order in terms of Section 34(4) of the KGST Act the officer is free to modify the assessment enhancing the rate of tax beyond the time prescribed u/s 19(1) or Section 43(1) of the KGST Act. An under-assessment whether in relation to turnover or in relation to rate of tax can be revised by the assessing authority u/s 19(1) of the KGST Act as escaped assessment. It is specifically mentioned in Sub-clause (3) of Section 19 that even if assessment has been subject-matter of an appeal, the assessing officer is still free to exercise his authority u/s 19(1) of the Act. In other words, the assessing authority can revise an assessment u/s 19(1) on any issue not covered by the decision in appeal. There is no bar against simultaneous revision of assessment u/s 19(1) along with revision of assessment in terms of order of the appellate authority as provided u/s 34(4) of the Act. While limitation for the purpose of revision of assessment u/s 19(1) is provided therein, limitation for assessment in terms of the appellate order is provided u/s 17(8) which was introduced by Act 13 of 1993 with effect from April 1, 1993. It is not in dispute that the revision of assessment on issues covered by the order in appeal was within the time-frame prescribed u/s 17(8) of the Act. However, so far as rate of tax is concerned, the revision of assessment which is in fact done u/s 19(1) of the Act is beyond the time prescribed under the said provision, i.e., then 4 years from the end of the relevant year which is now five years from the relevant year. Even if revision of original assessment in regard to rate of tax is treated as a mistake rectifiable u/s 43(1), still it is barred by limitation provided under the said section. In other words, the revision of assessment with regard to rate of tax by the officer in this case is beyond the time-limit provided under Sections 19(1) and 43(1) of the Act. The Special Government Pleader contended that once assessment is revised in terms of the direction contained in the appellate order, it is open to the officer to make correction of mistakes in the original assessment order in the course of such revision, and limitation in that case has to be considered with reference to Section 17(8) of the Act. We are unable to accept this contention because as already explained above the modification of assessment on issues unrelated to appeal is a matter to be done by the assessing officer in terms of statutory power conferred u/s 19(1) or Section 43(1) or by reference to the Deputy Commissioner for exercising jurisdiction u/s 35(1) of the Act. The only exemption to this is setting aside of assessment by the appellate authority and remand for de novo consideration, in which case all issues will be open to the assessing

officer and he can complete the assessment as if he is making a fresh assessment and limitation in that situation will be as provided u/s 17(8) of the Act.

3. It is therefore our view that the Scheme of the Act provides for finality of issues settled in assessment other than those contested in appeal and any process of modification of assessment should be in accordance with the specific powers conferred on various authorities under the statute and such powers should be exercised strictly within the time-limit provided therein. In fact, we feel the assessing officer could have got this mistake corrected through the appellate authority who has authority to enhance the assessment in the course of an appeal or by rectification of his order by referring the matter to him or through the Deputy Commissioner invoking his suo motu powers of revision u/s 35 of the Act.

4. The last issue is whether the non-filing of objection by the petitioner will confer jurisdiction on the officer to exercise powers u/s 19(1) or Section 43(1) beyond period of limitation. We feel as and when limitation is over, the officer ceases to have jurisdiction to revise the assessment and therefore, even if the petitioner does not file reply to proposal, the officer does not get jurisdiction to revise the assessment beyond time-limit. We, therefore, allow the revision vacating the order of the Tribunal and cancelling the revised assessment in regard to rate of tax on industrial gases.