

Velukutty Vs. Kerala Sales Tax Appellate Tribunal and ors.

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Court : Kerala

Decided On : Nov-15-1966

Reported in : [1967]20STC28(Ker)

Judge : M.S. Menon, C.J. and; S. Velu Pillai, J.

Appeal No. : O.P. No. 1741 of 1965

Appellant : Velukutty

Respondent : Kerala Sales Tax Appellate Tribunal and ors.

Advocate for Def. : Adv.-General

Advocate for Pet/Ap. : V. Rama Shenoi and; R. Raya Shenoi, Adv.

Disposition : Petition dismissed

Judgement :

S. Velu Pillai, J.

1. The petitioner preferred an appeal under Section 14 of the General Sales Tax Act, 1125 (Act 11 of 1125) against an assessment made under Section 12(2). That Act, which may be referred to hereafter as the 1125 Act, was repealed with effect from the 1st April, 1963, by the Kerala General Sales Tax Act, 1963 (Act 15 of 1963) which may be referred to hereafter as the 1963 Act. The appeal was

decided on the 18th April, 1964. The 2nd respondent in this petition, the State Government, appealed against the said decision, under Section 39 of the 1963 Act, to the Appellate Tribunal, which by its order, exhibit P-3 dated the 5th February, 1965, overruled the preliminary objection, that the State Government had no right of appeal against the decision of the appellate authority. This petition is to quash exhibit P-3.

2. Section 14 of the 1125 Act, which conferred the right of appeal on an assessee against his assessment, provided by Sub-section (4) thereof, that 'every order passed in appeal under this section shall, subject to the provisions of Sections 15 to 15C be final.' Section 15A, which is pertinent, provided by Sub-section (1), that 'any assessee objecting to an order relating to assessment passed-(i) by the Appellate Authority under Section 14...may ...appeal to the Appellate Tribunal...', omitting the parts of the sub-section which are not relevant. There is no provision in the 1963 Act which corresponds to Section 14(4) of the 1125 Act. Moreover, Section 39 of the 1963 Act, as distinguished from Section 15A of the 1125 Act, has conferred on the State Government also, a right of appeal to the Appellate Tribunal, for it provides by Sub-section (1), that 'any officer empowered by the Government in this behalf or any other person objecting to an order passed by the Appellate Assistant Commissioner under Sub-section (3) of Section 34...may...appeal against such order to the Appellate Tribunal.' The question for decision is whether, in this case, the State Government could appeal to the Appellate Tribunal under Section 39 of the 1963 Act, or is debarred from doing so by Section 15A of the 1125 Act.

3. For the petitioner it was contended, relying on the dictum of the Supreme Court in *Garikapati Veeraya v. N. Subbiah Choudhry* A.I.R. 1957 S.C. 540 at p. 553 that 'the right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists, as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced, such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal' and that 'this vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by

necessary intendment and not otherwise', that the right of appeal of either party, throughout the career of the proceeding was determined, the moment the assessment proceedings commenced under the 1125 Act and is not enlarged or curtailed by the 1963 Act, except to the extent provided for expressly or by necessary implication. In other words, the contention was, that under the 1125 Act under which the assessment proceedings started, no right of appeal to the Appellate Tribunal accrued to the State Government, and that the appeal by the 1963 Act did not either expressly or by necessary implication confer such right. The learned Advocate-General relied on Section 61 of the 1963 Act for contending that the State Government's appeal to the Appellate Tribunal is competent. As the decision of the case depends on Section 61 of the 1963 Act, it may be extracted below in full:

(1) The General Sales Tax Act, 1125 (Act 11 of 1125), is hereby repealed :

Provided that such repeal shall not affect the previous operation of the said Act, or any right, title, obligation or liability already acquired, accrued or incurred thereunder, and subject thereto, anything done or any action taken, including any appointment, notification, notice, order, rule, form, regulation, certificate, licence or permit, in the exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.(2) Notwithstanding anything contained in Sub-section (1), any application, appeal, revision or other proceeding made or preferred to any officer or authority under the said Act and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceeding under this Act if it had been in force on the date on which such application, appeal, revision or other proceeding was made or preferred.

4. It was argued for the petitioner, that the effect of Sub-section (2) of Section 61 is only to specify the officer who may dispose of a proceeding instituted under the

1125 Act, and pending at the commencement of the 1963 Act and nothing more. As for Sub-section (1), it was argued, that the State Government having had no right of appeal to the Appellate Tribunal under the 1125 Act, there had accrued to the petitioner from the commencement, a vested right to maintain the decision of the appellate authority whenever it is rendered, free or immune from attack or challenge by way of appeal to the Appellate Tribunal by the State Government and that the repeal of the 1125 Act did not affect such vested right. The right of appeal, which is a vested right and is a well-known concept, is of the party to whom it belongs and in the absence of it, what the other party derives is but an immunity in respect of the decision rendered, from attack or challenge by appeal. We entertain no doubt, that this immunity, whatever it may connote in different circumstances, means in the present context, neither more nor less than a finality in the decision when rendered. The question then is, whether such a right of finality in the decision had accrued from the inception of the proceedings to the party concerned.

5. A similar contention was advanced under the East Punjab Urban Rent Restriction Act, 1949, before the Supreme Court in *Moti Ram v. Suraj Bhan* A.I.R. 1960 S.C. 655. The case for the appellant before the Court was stated thus :

The appellant's case is that under Section 15, Sub-section (4), as it stood at the time when the present proceedings commenced, the decision of the appellate authority was final, and it could not be questioned in suit or other proceedings by way of appeal or revision. ...If at the time when the present proceedings commenced the decision of the appellate authority was final in the eye of law the subsequent amendment by which a revisional application has been allowed cannot affect that position. It was the appellant's right as a party to the proceedings to claim the benefit of the finality of the appellate order so far as the present proceedings are concerned.

The Court held :

Unfortunately for the appellant this point is concluded by the decision of this Court in the case of *Indira Sohanlal v. Custodian of Evacuee Property, Delhi* [1955] 2 S.C.R. 1117.

After dealing with that case, the Court concluded :

Having regard to this decision it is impossible to accede to Mr. Bindra's argument that the finality of the appellate decision could be invoked by the appellant before the said appellate decision was actually recorded. If no finality could be claimed at an earlier stage it is clear that at the time when the appellate authority decided the matter the amending section had come into force and when the appellate order was actually passed it could not claim the finality under the earlier provision.

In *Indira Sohanlal v. Custodian of Evacuee Property, Delhi* [1955] 2 S.C.R. 1117, the Supreme Court ruled at page 84:

However this may be, it appears to be clear that while a right of appeal in respect of a pending action may conceivably be treated as a substantive right vesting in the litigant on the commencement of the action-though we do not so decide-no such vested right to obtain a determination with the attribute of finality can be predicated in favour of a litigant on the institution of the action. By the very terms of Section 5-B of East Punjab Act 14 of 1947, finality attaches to it on the making of the order. Even if there be, in law, any such right at all as the right to a determination with the attribute of finality, it can in no sense be a vested or accrued right. It does not accrue until the determination is in fact made, when alone the right to finality becomes an existing right as in *Delhi Cloth & General Mills Co. Ltd. v. Income-tax Commissioner, Delhi* A.I.R. 1927 P.C. 242.

Applying the above rule, the petitioner could not claim a vested right in the decision of the appellate authority until the 18th April, 1964, when it was rendered. But before that date, the 1963 Act had come into force.

6. Section 61(1) of the Act further provides, that subject to a vested right, 'anything done or any action taken...in the exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act', as if the 1963 Act had been in force on the date on which such thing was done or action was taken. If the preferring of the appeal is equivalent to 'anything done' in the exercise of the power conferred by the Act, it would have to be deemed that, when the appeal was preferred, the 1963

Act had been in force. For the application of Section 61(1), the question arises whether the words 'anything done or any action taken...in the exercise of any power conferred by or under the said Act' occurring in it, are comprehensive to include the preferring of the appeal before the appellate authority, so as to render it an appeal preferred under Section 34 of the 1963 Act and the order therein appealable by the State Government to the Appellate Tribunal under Section 39. This also is concluded by the judgment of the Supreme Court in *Indira Sohanlal v. Custodian of Evacuee Property, Delhi* [1955] 2 S.C.R. 1117, where Section 58(3) of Administration of Evacuee Property Act, 1950 (Central Act 31 of 1950) providing that 'anything done or any action taken in exercise of any power conferred by or under the (repealed) Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken' was construed to apply to an application for confirmation preferred by the appellant before the Supreme Court under the concerned Act. The Court said :

Broadly speaking, the second portion of Section 58(3) refers to the whole range of things that may be done, or action that may be taken, under the previous Ordinance and the rules framed thereunder, while the first portion of Section 58(3) relates to the legal consequences resulting under the Ordinance or the rules from certain facts or from completed acts or things done thereunder. Without attempting to be meticulously accurate, it may be stated in general terms, that the scheme underlying Section 58(3) appears to be that every matter to which the new Act applies has to be treated as arising, and to be dealt with, under the new law except in so far as certain consequences have already ensued or acts have been completed prior to the appeal, to which it is the old law that will apply. In this view of Section 58, the application of the appellant for confirmation pending on the date when Central Act 31 of 1950 came into force had to be dealt with and disposed of under this Act and the order of confirmation passed in 1952 would clearly be subject to the revisional power of the Custodian General under Section 27 of the said Act.

Applying this reasoning to the relevant words of Section 61(1), it has to be held, that the petitioner's appeal against the assessment must be deemed to have been,

preferred under Section 34 of the 1963 Act, there being no vested right in favour of the petitioner, subject to which alone the repeal of the 1125 Act can take effect. If the appeal is deemed to have been preferred under Section 34 of the 1963 Act, the State Government has the right of appeal to the Appellate Tribunal.

7. In the above view, there is no scope for applying the rule in Section 4 of the Interpretation and General Clauses Act, 1125, and it is unnecessary to consider whether that rule has been abrogated by the repeal of the 1125 Act and by the re-enactment of the 1963 Act. Our attention was invited by the learned counsel to three decisions of the Madras High Court reported in Deputy Commissioner of Commercial Taxes, Madras Division v. Sri Swami and Company [1962] 13 S.T.C. 468, Deputy Commissioner of Commercial Taxes, Madras Division, Madras v. M. Balasundaram and Company [1963] 14 S.T.C. 996 and V. N. Surulivel Nadar and Brothers v. The State of Madras [1963] 14 S.T.C. 1005.

The first of these does not wholly support the petitioner, and to the extent that there is anything in any of them contrary to the pronouncements of the Supreme Court on which we have relied, we cannot agree.

In the result, this petition fails and is dismissed; no costs.