

Mathai Vs. State of Kerala

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Court : Kerala

Decided On : Jun-02-1964

Reported in : [1964]15STC710(Ker)

Judge : M.S. Menon, C.J. and; P. Govindan Nair, J.

Appeal No. : T.R.C. No. 45 of 1963

Appellant : Mathai

Respondent : State of Kerala

Advocate for Def. : M.J. Meenattoor, Government Pleader

Advocate for Pet/Ap. : C.T. Peter,; T.C. Karunakaran and; P.A. Francis, Adv

Judgement :

P. Govindan Nair, J.

1. The petitioner in this Tax Revision Case has been assessed to sales tax for the year 1955-56. This assessment is impugned as unwarranted in view of Rule 33 of the General Sales Tax Rules, 1950, which admittedly is the rule applicable to this case. Sub-rule (1) of Rule 33 is relevant and it is extracted below :

If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence 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 licence fee relates determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable or levy the licence fee in such turnover after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

2. By an order dated 15th February, 1957, the Sales Tax Officer originally came to the conclusion that the petitioner is a commission agent and therefore declined to impose any tax on the turnover of the goods sold by the petitioner. But the Deputy Commissioner of Sales Tax suo motu revised this order and assessed the petitioner by his order dated 5th March, 1960. The petitioner appealed before the Sales Tax Appellate Tribunal. That Tribunal by its order dated 16th August, 1960, set aside the 'orders of the Sales Tax Officer and the Deputy Commissioner' and directed a fresh assessment. Thereafter, notwithstanding the objection taken by the petitioner on the basis of Rule 33(1) extracted above, he has been assessed by the Sales Tax Officer and this order has been confirmed by the Appellate Assistant Commissioner and by the Sales Tax Appellate Tribunal.

3. In view of the fact that all orders prior to the date of the order of the Sales Tax Appellate Tribunal were vacated by the Appellate Tribunal, we think that any fresh assessment by the Sales Tax Officer must be governed by Rule 33(1). If that be so, the assessment must have been completed on or before the 31st March, 1959. The assessment in this case is long after and, therefore, cannot be sustained. We therefore set aside the order of assessment passed by the Sales Tax Officer and confirmed by the Appellate Assistant Commissioner and by the Sales Tax Appellate Tribunal and restore the original order of the Sales Tax Officer dated 15th February, 1957.

4. T.R.C. No. 45 of 1963 is allowed; but we direct the parties to bear their own costs.