

State of Kerala Vs. Shahid

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Court : Kerala

Decided On : Apr-03-2006

Reported in : 2006(2)KLT484; [2006]147STC1(Ker)

Judge : V.K. Bali, C.J.,; J.B. Koshy and; S. Siri Jagan, JJ.

Acts : Kerala General Sales Tax Act, 1963 - Sections 8, 8.1, 8(1), 10, 17, 17A, 17(6), 19 and 19(1); Madhya Bharat Sales Tax Act

Appeal No. : T.R.C. No. 96 of 2001

Appellant : State of Kerala

Respondent : Shahid

Advocate for Def. : Arikkat Vijayan Menon,; Harisankar V. Menon and; Meera V

Advocate for Pet/Ap. : Raju Joseph, Spl. Government Pleader (Tax)

Disposition : Petition allowed

Judgement :

J.B. Koshy, J.

1. Whether the Kerala Sales Tax Appellate Tribunal is right in holding that in a case where no return is filed by the dealer, the case has to be treated as one of turnover escaping assessment and limitation under Section 19 of the Kerala

General Sales Tax Act, 1963 would apply is the question referred for decision of the Full Bench.

2. A Division Bench of this Court in *V.S. Prabhakaran & Co. v. State of Kerala* 121 STC 586 has taken the view placing the reliance on the apex court decision in *Regional Assistant Commissioner of Sales Tax, Indore v. Malwa Vanaspati and Chemical, Co. Ltd.* (1968) 21 STC 431 that where the dealer has not filed the prescribed return of his turnover, the case is clearly one of escaped assessment and the proceeding for assessment must commence in respect of that turnover within the period prescribed by Section 19(1) of the Kerala General Sales Tax Act (K.G.S.T. Act) . The Division Bench which heard this case expressed doubt in the ratio in Prabhakaran's case (*supra*) as the decision of the Supreme Court relied on was dealing with the provisions of the Madhya Bharat Sales Tax Act which is not in pan materia with the provisions of the Kerala General Sales Tax Act.

3. Before going into the disputed question, we may first consider the provisions of the Kerala General Sales Tax Act regarding the procedure to be followed in the case of non-filing of return and assessment of escaped turnover. Section 17 of the K.G.S.T. Act deals with the procedure to be followed by the assessing authority which reads as follows:

17. Procedure to be followed by the assessing authority :--

(1) Every registered dealer and every dealer liable to take out registration under this Act shall submit such return or returns relating to his turnover in such manner and within such period as may be prescribed.

(2) If the assessing authority is satisfied that any return submitted under Sub-section (1) is correct and complete, it shall assess the dealer on the basis thereof.

(3) If no return is submitted by the dealer under Sub-section (1) within the prescribed period, or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its judgment;

xxx xxx xxx(6) Any assessment under this Section shall be completed within a period of four years from the expiry of the year to which the assessment relates:

xxx xxx xxx(portions not relevant to this case are omitted)

Under Section 17A, assessment for the period prior to 1 st April, 1993 for the turnover of the years prior to 1st April, 1993 has been extended up to 1.4.2000 as explained by the Full Bench of this Court in Geo Sea Foods v. Addl. S.T. Officer : 2006(1)KLT72 (F.B).

4. Section 19 of the K.G.S.T. Act reads as follows:

19. Assessment of escaped turnover:- (1) Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or has been under-assessed at a rate lower than the rate at which it is assessable or any deduction has been wrongly made therefrom, the assessing, authority may, at any time within four years from the expiry of the year to which the tax relates, proceed to determine to the best of its judgment the turnover which has escaped assessment to tax or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction that has been wrongly made and assess the tax payable on such turnover after issuing a notice on the dealer and after making such enquiry as it may consider necessary.

xxx xxx xxx(not relevant in this case)

5. In Regional Assistant Commissioner of Sales Tax, Indore v. Malva Vanaspati and Chemical Co. Ltd. (1968) 21 STC 431 Apex Court considered provisions of Madhya Bharat Sales Tax Act. There was specific provision under Section 8(1)(b) for assessment when no return is filed, but, assessment procedure as provided under Section 10 was adopted. Section 8.1(b) reads as follows:

Section 8.1(a)....

(b) Notwithstanding anything contained in Clause (a) if any dealer fails to submit a return under S.7(l) for the prescribed period within the prescribed time, the

assessing authority shall, after making such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of being heard, determine the turnover of the dealer for the said period to the best of his judgment and assess the tax on the basis thereof. This assessment, subject to the provisions of Section 10 and to such orders as may be passed in appeal or revision, shall be final for the period:xxx xxx xxx

Section 10 provides for all types of assessment of escaped turnover. Section 10 reads as follows:

Section 10. 'If for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to the tax, or if the licence fee, registration fee or exemption fee has escaped levy or has been assessed at too low a rate in any year, the assessing authority at any time within a period of three years next succeeding that to which the tax or the licence fee, registration fee or the exemption fee relates, assess the tax payable on the turnover which has escaped assessment or levy the correct amount of licence fee, registration fee or exemption fee, after issuing a notice to the dealer and after making such enquiry as he considers necessary.

Therefore, though assessment in case of failure to file return is prescribed under Section 8(1)(b), it is specifically stated that such assessment is subject to the provisions of Section 10. In that context only the Supreme Court held that time limit under Section 10 is applicable for making assessment under Section 8 when no return is filed by the assessee.

6. Learned Counsel for the petitioner relied on the decision of the Supreme Court in *Ghanshyamdas v. Regional Asst. Commr. of Sales Tax* (1963) 14 STC 976 to show that if there is failure to assess an assessee for non-filing of return, there is 'escape of assessment'. Counsel for the revenue argued that the words 'escaped assessment' are different from the words 'has not been assessed' and in case of non-filing of return, there is no assessment at all and hence it will not come under 'escaped assessment' and relied on the Division Bench decision of this Court in *United Timber & Cashew Products (P.) LTD. v. State of Kerala* 1987 KLT 59 : 1988 (69) STC 250 wherein the Privy Council decision in *Sir Rajendranath*

Mukerjee v. Commissioner of Income Tax (1934) 2 i TR 71 was relied on and held as follows:

There is no force in this plea. Acceptance of the argument of the counsel would equate 'has escaped assessment' to a position, 'has not been assessed'. That this is not the meaning to be given to the words 'escaped assessment' was settled as early as 1934 in Sir Rajendranath Mukerjee v. Commissioner of Income Tax (1934) 2 ITR 71. It passes one's comprehension to appreciate this plea, since, when the entire assessment is at large and the proceedings are commenced by the filing of a return and are still pending, anything can be said to have escaped assessment. We repel this argument also.

7. Assuming that evasion of tax due to non-filing of return also will come under the general group 'escaped turnover', we are of the view that in view of the specific provision of Section 17, general provisions in Section 19 will not apply. In other words, when there is a specific provision dealing with assessment on failure to file return with a special separate time limit, there is no necessity to go for general provision for assessment of escaped turnover under Section 19. The above principle is expressed in the maxims 'Generalia Specialibus non-derogant' (general statements or provisions do not derogate from special statements or provisions) and 'Generalibus Specialia derogant' (special provisions derogate from general provisions). As held by the Apex Court in *Gadde Venkateswara Rao v. Government of Andhra Pradesh and Ors.* : [1966]2SCR172 and *The Commissioner of Income Tax Patiala v. M/a.Shahzada Hand & Sons and Ors.* : [1966]60ITR392(SC) , if a special provision is made on a certain matter, that matter is excluded from the general provision. Apex Court applied this rule in resolving apparent conflict between Articles 25(2)(b) and 26(b) of the Constitution of India. (*Venkataramana Devaru v. State of Mysore* : [1958]1SCR895) for harmonious construction. Apex Court in *Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd.* AIR 2000 SC 2027 held that the above principle can be applied not only to resolve conflict between two provisions in the same enactment but also for resolving conflict of the provisions in the Act and Rules made thereunder. If the construction as suggested by the assessee is accepted, limitation provided under Section 17 (6) will have no application. It is settled principle that a construction

which would leave without effect any part of the language of a statute cannot be normally accepted (See Maxwell on Interpretation 12th Edition Page 36). Apex Court in Rao Shiv Bahadur Singh v. State of U.P. : 1954 CriLJ1480 has held as follows:

It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render apart of the statute devoid of any meaning or application. 'In the interpretation of statutes', observed Das Gupta, J.: 'the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.

(See J.K.Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. : (1961)ILLJ540SC). It is settled proposition that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. Since specific provisions with procedural details including limitation is provided under Section 17 for assessment in case of non-filing of return, there is no necessity to go to the limitation provision in general provision in Section 19 for assessment of escaped turnover. Hence, we answer the question in the negative accepting the contention of revenue. In view of the above, the view taken by the Division Bench of this Court in Prabhakaran 's case (supra) is overruled.

The Revision Petition is allowed. Judgment of the appellate Tribunal is set aside and Appellate Tribunal is directed to reconsider the appeal on the basis of law declared.

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