Forward Traders Vs. State of Kerala

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Court : Kerala

Decided On : Jun-05-1987

Reported in : [1988]69STC21(Ker)

Judge : K.S. Paripoornan and; K. Sreedharan, JJ.

Appeal No. : T.R.C. Nos. 106, 112 and 113 of 1983

Appellant : Forward Traders

Respondent : State of Kerala

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : V.V. Asokan, Adv.

Disposition : Petition allowed

Judgement :

K. Sreedharan, J.

1. These three revision petitions are filed by the same petitioner. He is an assessee under the Kerala General Sales Tax Act. The Revenue is the respondent in all these three cases. The matter relates to the assessment years 1972-73,1973-74 and 1974-75. The petitioner is an oil miller. For the above three years, 1972-73, 1973-74 and 1974-75, the turnover relating to the sales of oil and

oil cake were brought to tax after giving the assessee (revision petitioner) the benefit of the notification, S. R. 0. 116/66. The assessee had filed appeals before the Deputy Commissioner of Sales Tax (Appeals). For the first two years the appeals were disposed of on 10th May, 1978 and for the year 1974-75 the appeal was disposed of on 26th April, 1978. The Deputy Commissioner of Sales Tax (Central Zone), Ernakulam, took the view that the assessee is not entitled to the benefit of the concession contemplated by notification, S. R.O. 116/66, and initiated suo motu revision proceedings under Section 35(2A) of the Kerala General Sales Tax Act by issuing notice dated 6th November, 1979. By order dated 30th January, 1980, the Deputy Commissioner of Agricultural Income-tax and Sales Tax (Central Zone), Ernakulam, set aside the assessment orders for all the three years and remitted the matter to the assessing authority for fresh disposal according to law. This was so done notwithstanding the objections of the assessee objecting to the jurisdiction of the Deputy Commissioner of Sales Tax to initiate suo motu proceedings and also the plea on the merits. The assessee filed appeals before the Sales Tax Appellate Tribunal and contended that the suo motu revision proceedings initiated by the Deputy Commissioner of Sales Tax was illegal and unauthorised. He also pleaded that he is entitled to the benefit of notification, S. R. O. 116/66. The Appellate Tribunal held that the objection to the initiation of sup motu revision proceedings under Section 35(2A) is without force. It was held that it will be difficult to accept the assessee's contention that Section 35(2A) will not be applicable to orders of assessment passed before Ist April, 1978. Section 35(2A), which was inserted in the statute from 1st April, 1978, enabled the revisional authority (Deputy Commissioner of Sales Tax) to exercise enlarged jurisdiction in respect of assessment orders irrespective of the question whether such orders were passed before or after that date. The jurisdiction of the Deputy Commissioner of Sales Tax to initiate proceedings under Section 35(2 A) of the Act was upheld. On the merits, it was held that the petitioner was crushing copra in the mills run by others and so he is not entitled to the benefit of the notification, S. R. O. 116/66. The appeals filed by the petitioner were dismissed by the common order rendered for all the three years dated 11th January, 1983. The assessee has come up in revisions.

2. We heard counsel for the petitioner, Mr. Jose, as also the counsel for the Revenue, Mr. Nambiar. In view of the recent Division Bench decision of this Court in Palghat Oil Mills v. State of Kerala [1987] 65 STC 169, the petitioner's counsel did not press the plea that the assessee is entitled to the benefit of notification, S. R. O. 116/66. No argument was advanced regarding the applicability of S. R. 0.116/66.

3. The petitioner's counsel contended that the Deputy Commissioner of Sales Tax (Central Zone) was incompetent to initiate suo motu revision proceedings under Section 35(2A) of the Kerala General Sales Tax Act. It was submitted that the assessment orders were passed as early as 15th March, 1977. As the law stood then, the Deputy Commissioner of Sales Tax could not initiate suo motu revision proceedings under Section 35 of the Act, if the assessment order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal or of a revision in the High Court-section 35(2)(b). In this case, the assessment orders were made the subject of appeals to the Deputy Commissioner of Sales Tax. (The Deputy Commissioner of Sales Tax was exercising the powers of the Appellate Assistant Commissioner). The assessment orders passed on 15th March, 1977 were made the subject of appeals as contemplated by Section 35(2)(b) of the Act. Section 35(2A) of the Act came into force on 1st April, 1978. It has no retrospective effect. The enlarged or wider jurisdiction vested in the Deputy Commissioner under Section 35(2A) of the Kerala General Sales Tax Act cannot be made applicable to assessment orders, which became final and immune from suo motu proceedings, since they were made the subject of appeals, as specified in Section 35(2)(b) of the Act. The appeals against the three assessment orders in these three cases were filed, long before Section 35(2A) was brought in the statute book. The amendment is substantive in character and did not merely relate to procedure. The Appellate Tribunal was in error in holding that Section 35(2A) related only to 'a matter of procedure' and the enlarged jurisdiction under Section 35(2A) of the Act can be invoked by the Deputy Commissioner of Sales Tax to revise the orders, which were immune from the suo motu proceedings, long before the said section was inserted in the statute book. On the other hand, counsel for the Revenue contended that Section 35(2A) is merely procedural in character. It enables the Deputy Commissioner to exercise suo motu power within one year

from the date of the order in the appeal or before the end of 4 years from the date of the assessment order. Admittedly, the order passed in the suo motu revision by the Deputy Commissioner in this case is within the period of 4 years. The points mooted in the revisions were not taken up in the appeals filed by the assessee, nor were they adjudicated therein. Since Section 35(2A) provides only a matter for procedure, it could be invoked to revise the assessment orders passed in this case on 15th March, 1977. The suo motu re visional orders dated 30th January, 1980, are authorised nd legal.

4. We shall extract Section 35(2) and 35(2A) in order to appreciate the controversy raised in this case.

35. Powers of revision of the Deputy Commissioner suo motu.-(1) ....

(2) The Deputy Commissioner shall not pass any order under Sub-section (1) if-

(a) the time for appeal against the order has not expired;

(b) the order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired after the passing of the order referred to therein.

(2A) Notwithstanding anything contained in Sub-section (2), the Deputy Commissioner may pass an order under Sub-section (1) on any point which has not been decided in an appeal or revision referred to in Clause (b) of Sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of the period of four years referred to in Clause (c) of that sub-section, whichever is later.

Admittedly, no retrospective effect has been given to Section 35(2A) of the Act by the Amendment Act, Act 21 of 1978. It cannot be doubted that a wider or enlarged jurisdiction is vested in the Deputy Commissioner to suo motu revise orders, under Section 35(2A) of the Act. As per Section 35 of the Act, as it stood on the day when the assessments were rendered in these cases (15th March, 1977), and still later when the appeals were filed by the assessee against these three orders, suo motu revision by the Deputy Commissioner was not possible under Section 35(2)(b), since the assessment orders were made the subject of appeals. In other words, the assessment orders acquired finality subject to the disposal of the appeals filed by the assessee. In this view of the matter, it appears to us, that the new provision, Section 35(2A) of the Act, affects or impairs the existing rights of the assessee. It adversely affects substantive rights. We are of the view that Section 35(2A) is not a mere matter of procedure and the wider or enlarged jurisdiction cannot be invoked against orders made before the commencement of the amending Act. The decision of the Supreme Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas AIR 1968 SC 1336 concludes the point against the Revenue. In the said case the trial court dismissed the claim for ejectment and passed a decree for arrears of rent under Section 29 of the Bombay Rent Control Act (57 of 1947). The decree was confirmed on 25th February, 1963. There was no further appeal therefrom. A revision under Section 115 of the Civil Procedure Code alone will lie to the High Court. When such a revision was pending before-the High Court, Bombay Act 57 of 1947 was amended by Gujarat Act 18 of 1965, conferring wider jurisdiction on the High Court enabling it to decide whether the decision of the appellate court was 'according to law'. The jurisdiction to interfere under Section 115 of the Civil Procedure Code was confined to interfere in cases of jurisdictional errors and illegalities. As per the Amendment Act, the jurisdiction exercisable covered a wider field to examine whether the decision was 'according to law'. The Supreme Court held, the question, as to whether the High Court could, in the exercise of its jurisdiction, set aside, modify or alter the decision of the appellate court, was not a matter of procedure. Delivering the judgment of the seven member Bench, Shah, J., held at page 1339, paragraph 7, as follows :

The order of the appellate court, subject to scrutiny by the High Court within the limited field permitted by Section 115 of the Civil Procedure Code, was final. In conferring upon the High Court a wider jurisdiction for the purpose of determining whether the decision of the appellate court was according to law, the legislature did not attempt to legislate in the matter of procedure. The legislature expressly sought to confer upon the High Court power to reopen questions which till then were to be deemed finally decided.

It was held that the Amendment Act will not have retrospective operation. In the light of the above decision, we hold that the Deputy Commissioner of Sales Tax (Central Zone) acted illegally and without jurisdiction in initiating suo motu revision proceedings under Section 35(2A) of the Act to revise the assessment orders in these three cases, dated 15th March, 1977. The Appellate Tribunal was in error in holding that the matter related only to procedure and so the Deputy Commissioner was competent to revise the orders. We, accordingly, set aside the common order passed by the Appellate Tribunal in the appeals for the three years, dated 11th January, 1983.

5. These three revisions are allowed with costs. Advocate's fee Rs. 260 in each revision.