

State of Kerala

Vs

K. E. Nainan

Civil Appeals Nos. 2209 and 1777 of 1966

(J. C. Shah, K. S. Hegde, V. Ramaswami-I, A. N. Grover JJ)

29.07.1969

JUDGMENT

GROVER, J. -

1. These two appeals by special leave from the judgment of the High Court of Kerala involve a common question, namely, whether the revisional powers conferred on the Deputy Commissioner of Agriculture Income tax and Sales Tax under Section 15(1) of the Travancore-Cochin General Sales Tax Act, 1125, hereinafter called the Act, could be exercised in the present case after the expiry of a period of three years mentioned in Rule 33 of the Rules framed under the Act.

2. K. E. Nainan, the respondent, was a dealer in provisions at Kallar. The assessment years with which we are concerned in these appeals are 1955-56 and 1956-57. He was also conducting auction sales of cardamom for the year taken out a licence under Section 9 of the Act. The assessment for the year 1955-56 was completed by the Agricultural Income-tax and Sales tax Officer on September 5, 1956. His net turnover was determined at Rs. 11,448-14-9 representing the sales of provisions. Exemption was given in respect of the turnover of Rs. 96,515-15-0 of auction sales of cardamom. For the second year, i.e., 1956-57 the turnover of Rs. 2,39,925/- was similarly exempted. In granting these exemptions the assessee was given the benefit of the commission licence taken out by him for which he had paid a fee of Rs. 200/- and Rs. 400/- respectively for the two years in question.

3. The Deputy Commissioner of Agricultural Income-tax and Sales-tax on examining the assessment record suo motu was of the opinion that granting of exemption under licence was not proper, legal or regular because the assessee had not proved that the transactions were on behalf of known principles. In exercise of the powers conferred by Section 15(1) of the Act the Deputy Commissioner canceled the assessments and remanded the case to the assessing authority for fresh disposal.

4. After giving the assessee adequate opportunity for producing the relevant documents and accounts which he failed to do for one reason or the other the assessing authority made fresh assessments by which the turnover of the assessee in respect of the auction sales was included in the taxable turnover and the exemption under the licence was disallowed.

5. The assessee appealed to the Appellate Assistant Commissioner of Agricultural Income-tax and Sales tax. One of the contentions raised before him was that the turnover which had previously been exempted and later included was "escaped turnover" and therefore the assessments were barred by limitation under Rule 33. The Appellate Assistant Commissioner, however, dismissed the appeals repelling all the contentions raised before him. The assessee filed further appeals before the Kerala

Sales Tax Appellate Tribunal. These appeals also failed. The assessee then filed Tax Revisions before the High Court. The High Court referred to its previous judgment in *K. Sarvothama Srinivasa Shenoy and Co. v. Deputy Commissioner of Agricultural Income-tax and Sales Tax, Kozhikode*, 1965 KLT 304 and after referring to Section 15 of the Act and Rule 33 of the Rules, it was held that the revisional authority could not have interfered after the expiry of a period of three years since the dispute related to escaped turnover.

6. In *Deputy Commissioner of Agricultural Income-tax and Sales-tax, Quilon v. M/s. Dhanalakshmi Vilas Cashew Co. etc.*, [1969 KLT 238; (1969) 24 STC 491] this Court examined the same question which arises for decision in the present appeals. It was held that Section 15(1) was meant for interference when there was some illegality or impropriety or irregularity in the order of the assessing authority which had to be set right. It could not cover those cases in which the turnover had escaped assessment. If the question was not one of escapement of turnover Rule 33 would have no application and the period of limitation provided thereby could not be attracted. Reference may also be made to another decision of this court in *State of Kerala v. M. Appukutty*, [14 STC 242; AIR 1963 SC 796 : 1963 Supp 1 SCR 563] in which the principles governing such cases had been clearly stated.

7. Although it is stated in the judgment of the High Court that the present cases were of escaped turnover we are altogether unable to endorse that view. The question which the Deputy commissioner had to consider was one of the legality, propriety and regularity of the exemption of the turnover granted under the licence in respect of the auction sales. This fell strictly within the purview of Section 15(1) of the Act and there was no question of any action being taken under Rule 33 on the ground that there had been escapement of turnover. The period of limitation for such proceedings is prescribed by Section 15 itself to be four years from the date on which the order was communicated to the assessee. According to the rule laid down by this Court in *State of Kerala v. M. Appukutty* (supra), which was followed in *D.C. Agricultural Income-tax and Sales tax v. M/s. Dhanalakshmi Vilas Cashew Co. etc.*, (supra) that would be the period of limitation governing the present cases and not three years as provided by Rule 33.

8. The appeals are therefore allowed with costs and the decision of the High Court is hereby set aside. One hearing fee.

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