

Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam, Kerala

Vs

N. P. Ammalu

Civil Appeals Nos. 2153-2154 of 1979

(P.N. Bhagwati, E.S. Venkataramiah JJ)

09.02.1983

JUDGMENT

VENKATARAMIAH J.-

1. These appeals by certificate are filed against the Judgment and order dated November 6, 1978 of the High Court of Kerala T. R. C. No. 154 of 1977 and T. R. C. No. 155 of 1977 which arose out of sales tax assessment proceeding under the Kerala General Sales Tax Act, 1963 (hereinafter referred to as 'the Act') for the years 1970-71 and 1971-72 respectively.

2. The assessee Kelappan (since deceased) who was a dealer in ornaments and other jewels made of gold had filed a return showing a taxable turnover of Rs. 13,757.65 for the year 1970-71. He did not, however, file any return for the year 1971-72. He claimed that he was liable to be taxed at one per cent on the taxable turnover relating to the purchase of ornaments and the articles of gold purchased by him under Section 5(1) of the Act read with Entry 56 of the First Schedule to the Act contending that the goods in question constituted 'bullion and specie'. But the Sales Tax Officer, Badagara determined the taxable turnover at Rs 2,73,616.92 for the year 1970-71 and Rs 1,84,927.36 for the year 1971-72 and levied sales tax at three per cent of the taxable turnover under Section 5-A read with Section 5(1) (ii) of the Act. The appeals filed by the assessee against the said assessment orders were dismissed by the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, Kozhikode. The assessee filed appeals before the Appellate Tribunal. The Tribunal allowed the appeals and determined the tax liability of the assessee in accordance with Entry 56 of the First Schedule to the Act. The revision petitions preferred by the Department before the High Court against the orders of the Tribunal were dismissed following the decision of that court in Deputy Commissioner of Sales Tax v. M/s. G. S. Pai & Co.(ILR (1978) 1 Ker 607 1980 SCC (Tax) 70 : AIR 1980 SC), decided on February 13, 1978. Thereafter the High Court granted certificates of fitness to the Department to file these appeals. Hence these appeals.

3. The question involved in these cases is covered by the decision of this Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue v. M/s G. S. Pai & Co.((1980) 1 SCR 938 : (1980) 1 SCC 142 : 611 : (1980) 45 STC 58) in which the decision of the High Court of Kerala in Deputy Commissioner of Sales Tax v. M/s G. S. Pai & Co.(ILR (1978) 1 Ker 607 1980 SCC (Tax) 70 : AIR 1980 SC) was reversed and it was held that the ornaments and other articles of gold purchased by the assessee therein did not fall within Entry 56 of the First Schedule to the Act but the turnover relating to them was taxable at the general rate of three per cent under Section 5-A read with Section 5(1) (ii) of the Act. Following the above decision of this Court, we set aside the decisions of the High Court and of the Tribunal and restore the orders of the Appellate Assistant Commissioner confirming the orders of the Sales Tax Officer. The appeals are according allowed.

There shall, however, be no order as to costs.

4. Before concluding it is necessary to refer to a memorandum filed on behalf of M. M. Ammukutty, legal representative of the respondent N. P. Ammalu (since deceased) who was the wife and legal representative of Kelappan (the assessee) stating that N. P. Ammalu had died leaving a will under which specific directions had been given regarding payment of taxes, if any, due and payable by her. We do not express any opinion on the above question at this stage. It is open to the Department to recover the taxes due and payable in these proceedings in accordance with law.

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