State Tax Officer (Works Contract) Vs Leela Electric Power Services

Court: High Court Of Kerala

Date of Decision: Jan. 8, 2025

Acts Referred: Constitution of India, 1950 â€" Article 14
Kerala Value Added Tax Act, 2003 â€" Section 25, 25(1), 42(3)

Hon'ble Judges: Dr. A.K.Jayasankaran Nambiar, J; Easwaran S, J

Bench: Division Bench

Advocate: V.K.Shamsudheen, K.J.Abraham, Nikhil John

Final Decision: Dismissed

Judgement

Dr. A.K.Jayasankaran Nambiar, J

1. This Writ Appeal preferred by the State impugns the judgment dated 09.06.2020 in W.P.(C).No.11291 of 2020.

2. The brief facts necessary for disposal of the Writ Appeal are as follows:

The writ petitioner was an electrical contractor and a dealer under the Kerala Value Added Tax Act [hereinafter referred to as the Ã¢â‚¬Å“KVAT

ActÃ¢â‚¬] . During the assessment year 2011-12, he filed returns along with audit reports in Form 13 and Form 13A as prescribed under the KVAT Act

and Rules. Thereafter, nothing was heard from the Department, and the petitioner assumes that the assessment has become final. He was however

served with a notice dated 13.02.2019 under Section 25(1) read with Section 42(3) of the KVAT Act. In the proceedings that followed, his objections

were considered and Ext.P5 assessment order passed confirming a substantial demand against him. In the writ petition, the respondent/writ petitioner

impugned Ext.P1 notice and Ext.P5 assessment order inter alia on the ground that the proceedings that led to the said assessment order were barred

by limitation.

The learned Single Judge, who considered the writ petition, found that inasmuch as the notice under Section 25(1) was issued beyond six years, it was

barred by limitation even going by the provisions of Section 25(1) as amended with effect from 01.04.2017 by the Finance Act, 2017. In finding the

notice under Section 25(1) of the KVAT Act to be barred by limitation, the learned Judge relied on the judgment of this Court in Baiju A.A. and

Others v. State Tax Officer and Others - [2020 (1) KHC 39]. As regards the validity of the notice, to the extent it invoked Section 42(3) of the

KVAT Act, the learned Judge found that even the said notice was barred by limitation going by the judgment of the Division Bench of this Court in

M/s. MCP Enterprises v. State of Kerala and Others Ã¢â‚¬" [2020 (1) KHC 127]. The writ petition was therefore allowed by setting aside Ext.P1 notice

and Ext.P5 assessment order.

3. In the appeal before us, the main contention raised by Sri.V.K.Shamsudheen, the learned senior Government Pleader, is that, while it may be a fact

that the notice, to the extent it invoked Section 25(1) of the KVAT Act, was barred by limitation as laid down in Baiju A.A. [supra], the same could

not be said of the notice, to the extent it invoked Section 42(3) of the KVAT Act. It is pointed out that the Division Bench in MCP Enterprises [supra]

had only clarified that the provisions of Section 42(3) of the KVAT Act do not have a retrospective effect beyond a period of five years and did not

hold that the provision itself could not be invoked after a period of five years from the end of the assessment year.

5. We have considered the said submission of the learned senior Government Pleader but find ourselves unable to accept the same. The very issue as

to whether, on the expiry of the period envisaged for re-opening assessments under Section 25 of the KVAT Act, notices for re-opening assessments

could be issued invoking Section 42(3) of the KVAT Act was considered by a Single Bench of this Court comprising of one of us [Dr. Justice A.K.

Jayasankaran Nambiar] in M/s. MCP Enterprises v. State of Kerala Ã¢â‚¬" [2020 (2) KLT 295]. In the said case, the petitioners had contended that in

cases where the period for re-opening assessments under Section 25 of the KVAT Act had expired, the Revenue could not invoke Section 42(3) of

the KVAT Act to re-open assessments that had already become final under the KVAT Act. While dealing with the said contention, the Court went

into the Scheme of Section 42(3) of the KVAT Act and found as follows in paragraphs 7 to 10 of the said judgment;

7. On a consideration of the facts and circumstances of the case as also theÃ¢â‚¬Å“ submissions made across the bar, I find that Section 42 of the KVAT Act was

amended through a Notification dated 13.11.2016, and the amendment was given retrospective effect from 01.04.2005, the date on which the KVAT Act was brought

into force in the State of Kerala. The legislative power of the State legislature to amend the Act with retrospective effect, cannot be disputed for the power to legislate

carries with it the power to legislate retrospectively also [See M/s.J.K. Jute Mills Co. Ltd. v. State of Uttar Pradesh and another Ã¢â‚¬" [1961 KLT OnLine 1235 (SC) = AIR

1961 SC 1534]; Mr. Jadao Bahuji v. The Municipal Committee, Khandwa and Anr. - [1961 KLT OnLine 1236 (SC) = AIR 1961 SC 1486]; M/s. Raghubar Dayal Jai

Parkash and Ors. v. The Union of India and Anr. - [1962 KLT OnLine 1135 (SC) = AIR 1962 SC 263]; State of Karnataka and Ors. v. Karnataka Pawn Brokers

Association and Ors. Ã¢â‚¬" [2018 (2) KLT OnLine 2032 (SC) =(2018) 6 SCC 363 = 2018 KHC 6187].Ã, Limitations have, however, been recognised to the power to

legislate retrospectively, and the issue toÃ, beÃ, consideredÃ, in these cases is whether any such limitation ought to be applied in relation to Section 42(3) of the

KVAT Act.

8. It would appear that by introducing a new Sub section (3) to Section 42, the State legislature wanted to carve out a class of assessees namely, those whose

turnover exceeded the threshold limit specified in Section 42(1), for a differential treatment in the matter of re-opening of assessments to assess escaped turnover.

The technique that was employed was to define the circumstances under which, in the case of such assessees, the assessments would not be deemed complete

under Sections 21, 22 or 24, but would be deemed pending for the purposes of Section 25, notwithstanding the limitation period prescribed under Section 25 which

was expressly stated to be inapplicable to such cases. Although the petitioners would contend that the classification brought about between two categories of

assessees for differential treatment in the matter of re-opening of assessment would offend Article 14 of the Constitution of India, I am of the view that in enacting

fiscal legislation the legislature is entitled to a great deal of latitude and this Court would interfere with such a classification only if there is a clear transgression of

constitutional principles that is established. In the instant case, when viewed against the object sought to be achieved by the legislature viz. the taxation of escaped

turnover, a classification effected amongst assessees, based on turnover, and for the purpose of adopting a different procedure for those with a higher turnover,

appears to me to be guided by an intelligible differentia having a rational nexus with the object sought to be achieved by the legislature. The said classification would

therefore withstand the tests under Article 14 and the statutory provision cannot be said to be discriminatory in the sense of treating unequals as equals.

9. While the prospective operation of Section 42(3) satisfies the test of constitutionality, the question arises as to whether the retrospective operation of the newly

introduced provision would cause the assessees substantial prejudice or deprive the assessees of any vested right that accrued to them prior to the introduction of

the new provision. It is trite that if a retrospective operation of a statutory provision has the effect of depriving an assessee of an accrued right, in a manner that will

substantially prejudice him, then such retrospective operation of the amended provisions would not be legally justified. [See Rai Ramkrishna v. State of Bihar Ã¢â‚¬

[1963 KLT OnLine 1210 (SC) = AIR 1963 SC 1667]; R.C. Tobacco Pvt. Ltd. and Another v. Union of India and Another Ã¢â‚¬" [2005 (3) KLT OnLine 1113 (SC) = AIR

2005 SC 4203]; Jayaram and Company v. Assistant Commissioner and Another Ã¢â‚¬" [2016 (3) KLT OnLine 2448 (SC) = (2016) 15 SCC 125]. In my view, the same would

be the position if, on account of a retrospective operation of the newly introduced provision, the assessee is not in a position to adduce material to defend itself

against an allegation of suppressed/escaped turnover. In these cases, one of the contentions raised on behalf of the petitioner/assessees is that the retrospective

operation of Section 42(3) would entail the re-opening of assessments that were completed years ago, and in relation to which assessment years the assessees do not

have the relevant Books of account and other records to defend their case against an allegation of escaped turnover. The said contention is based on the provisions

of Rule 58(20) of the KVAT Rules, which obliges an assessee to keep his Books of account only for a period of five years from the end of the assessment year in

question or two years from the date of disposal of the appeal or revision arising out of such assessments or from the date of completion of any other provision under

the Act connected with such assessment, appeal or revisions whichever is later. Thus, from the Scheme of the Act and Rules, there can be inferred a finality to

assessment proceedings within a specified period from the end of the assessment year. The fixing of such a specified period would also be in line with the judgments

that hold that in the absence of a prescribed time limit for completing assessments under the Statute, a reasonable period has to be read in, and in determining what

that reasonable period should be, clues can be gathered from the other provisions under the KVAT Act and Rules. [See State of Gujarat v. Patel Raghav Natha and

Others Ã¢â‚¬" [AIR 1969 SC 1297]; State of Punjab and Others v. Bhatinda District Cooperative Milk Producers Union Ltd. - (2007) 11 SCC 363; Director of Income-Tax

(International Taxation) v. Mahindra and Mahindra Ltd. - [(2014) 365 ITR 560 (Bombay)].

10. What then should be the period prescribed for exercise of the power under Section 42(3) and consequently the extent of retrospectivity conceded to the statutory

provision ? Ordinarily, one could have looked to the time limit prescribed for exercise of a similar power, and for a similar purpose under the Act, to apply the same

time limit for the exercise of power under Section 42(3). A similar power is contained in Section 25 of the KVAT Act but the time limit under the said provision is

expressly stated to be inapplicable to Section 42(3). This Court has therefore to look at the overall Scheme of the KVAT Act, the interests of ensuring certainty in

taxation matters as also the necessity to interpret the provision in a manner that would avoid unconstitutional results such as unreasonableness, unfairness and

arbitrariness of the statutory provision, for determining the limits of exercise of the power under Section 42(3). In my view, the time limit specified in Rule 58(20) of the

KVAT Rules offers a safe guide to define the limits of the power under Section 42(3) of the Act. It would ensure that the power to re-open assessments, so as to bring

to tax escaped turnover, is not exercised in a manner that prejudicially affects an assessee who is not in a position to meet the charge against him for want of his

Books of account and other relevant material. Such a limitation on the power to re-open assessments would also accord with the requirement of ensuring fairness and

certainty in maters of taxation, a feature that has been insisted upon in the tax jurisprudence of our country. [See New Delhi v. Vatika Township Private Limited -

[(2015) 1 SCC 1]; Principal Commissioner of Income-Tax v. Maruti Suzuki India Ltd. - [(2019) 416 ITR 613 (SC)]]. As observed by the Supreme Court in the last

mentioned case, Ã¢â‚¬Å“there is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and

business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.Ã¢â‚¬â€‹

The said findings were affirmed by the Division Bench in State of Kerala v. MCP Enterprises - [2023 (2) KLT SN 30 (C.No.14)], where, at

paragraphs 18 and 19, the Division Bench found as follows:

Ã¢â‚¬Å“18. As noted above, Section 21 provides for self-assessment of returns filed under Section 20. The self-assessment is subject to reassessment under Section 25 of

the KVAT Act. The broad heads attracting reassessment have a period of limitation of five or six years as is applicable to the return period. The structure of Section

42(3) is that for an omission brought under Section 42(3), there is no limitation at all. It is the fiction created by the phrase Ã¢â‚¬Ëœtreated as pendingÃ¢â‚¬â„¢ the limitation

otherwise attracted is removed. Juxtapose both situations; on the one hand, Sections 22 and 25, and on the other hand, section 42(3)(i) to (iv), there is inconsistency

in the application. The certainty covered for reopening is disturbed, and uncertainty in reassessment is created. The argument of the Counsel for dealers that there

will be limitation and no limitation for the same or similar eventualities appears to be correct. From 01.07.2017, the tax on the supply of goods and services is in

operation, and the returns filed under the KVAT Act will be at large with uncertainty. From the above consideration, we are of the view that the provision under

challenge, if read in the manner suggested by the State, would lead to inconsistency and attracts contradiction in terms. With a view to harmonizing the provisions in

the Statute, the learned Judge has referred to the requirement of maintaining books for five years as the period for which reassessment could be undertaken. With

effect from 01.07.2017, the GST regime is in operation, and the State Legislature, in terms of Section 19 of Constitution Amendment Act 2016 is enabled to repeal or

amend the laws inconsistent with the amended articles in the Constitution. Even after the anvil of the GST regime, the uncertainty of reassessment under Section

42(3) of the KVAT Act, in spite of other limitations or timelines are over, continues. This is an uncertain and contradictory state of affairs. The literal construction is

leading to situations resulting in more hardship than envisaged at any point of time. The limitation is erased by fiction. So the Court, by construing the fiction in a

reasonable way and limiting the retrospectivity in line with other provisions, the scheme of the KVAT Act brings harmony to the appended and unamended

provisions. In fact, the judgment under appeal, from a slightly different viewpoint, has arrived at the same conclusions. We are in full agreement with the view and

conclusions recorded in the judgment under appeal. (emphasis supplied)

19. The learned Judge, through the impugned judgment, has rightly held that the Legislature is competent to make retrospective law, and in the case on hand, the

retrospectivity is spelt out in categorical terms, confer discernible reasons and has rightly held that the retrospectivity must be in consonance with a reasonable

period, provided for in the VAT Act. Otherwise, the threat of reassessment without reference to timelines will be staring at all the dealers who have filed returns for

the period of return 2005- 06 till 2016- 17 and at any time, the dealer could be subjected to the procedure of reassessment. We are, for the above reasons, in agreement

with the view expressed in the judgment under appeal, we are not further dwelling on practical difficulties etc.Ã¢â‚¬‹ (emphasis supplied)

Thus, it is clear that the contention of the learned Government Pleader in the present appeal has already been considered by this Court in the decisions

pertaining to MCP Enterprises referred above and have been answered against the Revenue. We therefore see no reason to interfere with the

impugned judgment of the learned Single Judge. The Writ Appeal fails and is accordingly dismissed.