

(1987) 07 KL CK 0065

High Court Of Kerala

Case No: T.R.C. No. 97 of 1987

United Timber and Cashew
Products (P.) Ltd.

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision: July 17, 1987

Acts Referred:

- Kerala General Sales Tax Act, 1963 - Section 61(1)

Citation: (1988) 69 STC 250

Hon'ble Judges: K.S. Paripoornan, J; K. Sreedharan, J

Bench: Division Bench

Advocate: P.A. Mohammed, for the Appellant;

Final Decision: Dismissed

Judgement

K.S. Paripoornan, J.

The petitioner is an assessee to sales tax. The matter relates to the year 1962-63. The assessing authority finalised the assessment on a gross and net turnover of Rs. 48,00,090.73 and Rs. 23,20,212.60 respectively by assessment order dated 20th March, 1967. The Appellate Assistant Commissioner, by his order dated 19th August, 1972, set aside the assessment order and ordered a remit. He directed the officer to re-examine the liability to tax on the closing stock of cashew and pepper in the light of the decision of the Supreme Court in State of Madras v. T. Narayanaswami Naidu [1968] 21 STC 1. The assessee filed a second appeal before the Appellate Tribunal. It was contended that the assessment is barred by limitation. The Appellate Tribunal negated this plea. Thereafter the assessing authority, in pursuance of the directions of the Appellate Assistant Commissioner, re-examined the liability on closing stock and finalised the fresh assessment on a taxable turnover of Rs. 26,92,382.04. An appeal was filed before the Appellate Assistant Commissioner, who, by his order dated 25th May, 1981, dismissed the same. Thereafter the assessee filed a second appeal before the Sales Tax Appellate Tribunal and

reiterated his objections to the assessment. It was contended that the original assessment itself was barred by limitation. It was further contended that the value of opening stock of cashew and pepper was not considered at the time of original assessment and this was taken into account in the fresh assessment (revised assessment). The matter, being governed by the General Sales Tax Act, 1125, for the year 1962-63, should have been completed within three years. The value of the opening stock, escaped assessment, and the inclusion of the same in the fresh assessment under the guise of the implementation of the appellate order, is illegal. Both these arguments were negated by the Appellate Tribunal. The assessee has come up in revision.

2. We heard counsel for the petitioner, Mr. P. A. Mohammed. The twofold objections taken before the Appellate Tribunal were repeated before us. It was contended that the original assessment itself is barred by limitation. It was further contended that the value of opening stock of cashew and pepper, which was not considered at the time of original assessment, could not be assessed in the revised assessment effected after remit. We see no force in both these contentions.

3. In the appeal filed from the original assessment a specific plea was taken before the Appellate Tribunal that the original assessment was barred. This plea was negated by the Appellate Tribunal. Thereafter the assessee did not pursue the matter. So the finding of the Appellate Tribunal, that the original assessment is not barred, became conclusive. Even on the merits, we find that there is no force in this plea. The General Sales Tax Act, 1125 was repealed on 31st March, 1963. Thereafter, in view of Section 61(1) of the Kerala General Sales Tax Act, the proceedings had to be pursued under the new Act and the assessment was made only on 16th December, 1967 (sic). It is stated that the assessee filed monthly returns for the entire year. It is trite law that the proceedings for assessment start either by the filing, of a return by the assessee or by the issue of a notice by the assessing authority. It is further settled law that when once assessment proceedings are initiated or commenced, it will come to an end only by the final order of assessment. The Appellate Tribunal has adverted to the several notices issued to the assessee, pointing out difference in the amounts in the monthly returns and also asking for details. As late as 15th November, 1965, which is well within the period of three years, a notice was sent to the assessee. On these premises the plea that the original assessment is barred is wholly without substance.

4. We will next take up the only other plea to the effect that the value of the opening stock of cashew and pepper, which was not considered at the time of the original assessment, should not and could not have been brought to tax in the revised assessment. Counsel for the petitioner conceded that the revised assessment was made as a result of the order of remit passed by the Appellate Assistant Commissioner. When once the order of assessment is set aside, the entire matter is at large. The fact that an item was not considered at the time of original assessment,

if it is otherwise exigible to tax, will not deter or preclude the assessing authority from considering that matter at the time of revised or fresh assessment. When once an order of assessment is set aside and the matter is remitted to the assessing authority, the entire assessment proceedings are still pending. There can be no scope for any escaped assessment. Counsel for the assessee laid stress on the fact that in so far as the value of the opening stock of cashew and pepper was not considered at the time of original assessment, the turnover relating thereto should be deemed to have escaped assessment, and in that view of the matter, a right accrued to the assessee not to be assessed relating to the said turnover. 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.

5. There is no merit in this tax revision case. It is dismissed in limine.