
Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs V. Gopi

T.R.C. No. 152 of 1983

Court: High Court Of Kerala

Date of Decision: June 1, 1987

Acts Referred:

Kerala General Sales Tax Act, 1963 " Section 55B(b)

Citation: (1987) 67 STC 79

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

Bench: Division Bench

Advocate: The Government Pleader, for the Appellant; Arikkat Vijayan Menon, for the Respondent

Final Decision: Dismissed

Judgement

K.S. Paripoornan, J.

The Revenue is the petitioner. The respondent is an assessee under the Kerala General Sales Tax Act. The

controversy relates to the assessment year 1977-78. The assessment for the said year was made to the best of judgment by the assessing

authority. The total and taxable turnover was fixed as Rs. 1,08,480. The assessment order was confirmed in appeal by the Appellate Assistant

Commissioner. In second appeal the Sales Tax Appellate Tribunal set aside the assessment and ordered a remit. The only controversy raised in the

revision is whether the pre-assessment notice dated 16th June, 1979, was served on the assessee. The Appellate Tribunal held that there was no

valid service of the pre-assessment notice and the absence of such a notice disabled the respondent-assessee from filing his objections. In this view

of the matter, the assessment order, as well as the appellate order, were set aside and the assessing officer was directed to make final assessment a

fresh after issuing a pre-assessment notice to the assessee after giving him an effective opportunity to raise his contentions. The Revenue has come

up in revision.

2. We heard counsel for the Revenue, Mr. T. Karunakaran Nambiar, as also counsel for the respondent-assessee, Mr. Menon. The only short

question raised is, whether the pre-assessment notice was validly and properly served on the respondent-assessee. The Appellate Tribunal held

that it was not so served as required by Section 55B(b) of the Kerala General Sales Tax Act, in the light of the endorsement of the peon. The

endorsement by the peon of the department about the service of the pre-assessment notice is as follows :

As there is no person to receive the notice, it was served by affixure on shop No. 616 in ward AMC. XII. Peon S. Prabhakaran Nair.(English

translation)

Counsel for the Revenue, Mr. Nambiar, contended that the assessee could not be seen and so he could not be found, and placed in that

circumstance, the affixure of the notice on some conspicuous part of the shop, as stated in the endorsement by the peon, is valid and proper.

Counsel for the assessee-respondent, Mr. Menon, refuted the said plea and submitted that there has been no compliance with the provisions of

Section 55B(b) of the Kerala General Sales Tax Act, 1963.

3. Since the entire controversy depends upon the interpretation to be placed on Section 56B of the Kerala General Sales Tax Act, 1963, we shall

extract the provision.

55B. Service of notice.-Any notice required to be served on, or given to, any person under this Act or the rules made thereunder shall be deemed

to be duly served or given-

(a) if the notice is addressed to that person and is given or tendered to him; or

(b) where that person cannot be found, if it is affixed on some conspicuous part of his last known place of residence or business or is tendered to

some adult member of his family; or

(c) if it is sent by registered post to that person at his last known place of residence or business.

The sole question that arises for consideration in this case, is whether it could be said that the assessee ""could not be found"", to enable the serving

officer to affix the notice on a conspicuous part of the shop. We are of the view that the submission of the counsel for the Revenue is that if an

assessee cannot be seen, it will amount to a situation where he cannot be found. The expression ""a person cannot be found"" has been considered

by a Full Bench of the Madras High Court in COMMISSIONER OF Income Tax, MADRAS Vs. NATIONAL CYCLE IMPORTING

COMPANY., . The Madras High Court was, no doubt, construing the proviso to Section 26(2) of the Indian Income Tax Act, as it stood then. It

was held that in order to say that a person cannot be found, he should be dead or should have disappeared. If a person is alive, and his

whereabouts are known or can be ascertained, it is impossible to say that he cannot be found. Though the Full Bench of the Madras High Court

was construing the words ""cannot be found"" that occurred in the proviso to Section 26(2) of the Indian Income Tax Act, as it stood then, we see

no reason why the words that ""a. person cannot be found"" occurring in Section 55B(b) of the Kerala General Sales Tax Act should receive a

different interpretation. Accordingly we hold that in order to say that a person cannot be found, within the meaning of Section 55B(b) of the Kerala

General Sales Tax Act, it should be found that that person is dead or has; disappeared. It cannot apply to a case where the assessee or the

particular person is alive and his whereabouts are known or can be ascertained. In this case the endorsement is clear. It is to the effect that the

assessee was not seen and so a notice was served by affixure. This is not in compliance with Section 55B(b) of the Kerala General Sales Tax Act,

1963. We hold that the Appellate Tribunal was justified in law in holding that there is no valid service of pre-assessment notice in this case. On that

basis, the Appellate Tribunal was further justified in setting aside the orders of the authorities below and in ordering a remit.

4. This tax revision case is without merit. We dismiss the revision. There shall be no order as to costs.