

**(2003) 05 KL CK 0040**

**High Court Of Kerala**

**Case No:** T.R.C. No. 340 of 2001

Kuhikuttan

APPELLANT

Vs

State of Kerala

RESPONDENT

---

**Date of Decision:** May 21, 2003

**Acts Referred:**

- Kerala General Sales Tax Act, 1963 - Section 43

**Citation:** (2006) 143 STC 305

**Hon'ble Judges:** J.M. James, J; G. Sivarajan, J

**Bench:** Division Bench

**Advocate:** N. Muraleedharan Nair and V.K. Shamusudheen, for the Appellant; Sojan James, Government Pleader, for the Respondent

**Final Decision:** Allowed

---

### **Judgement**

G. Sivarajan, J.

The assessee is the revision petitioner. State is the respondent. Assessment year is 1991-92.

2. The petitioner is running a jewellery shop in the name and style of "Sangeetha Jewellery", at Koyilandy. For the assessment year 1991-92, the assessee filed a return disclosing a taxable turnover of Rs. 1,55,705. The assessing authority rejected the return and accounts and completed the assessment on the turnover of Rs. 4,40,540. Being aggrieved by the said assessment the assessee filed an appeal before the Additional Appellate Assistant Commissioner I AIT & ST, Kozhikkode who by its order dated May 2, 1995 (annexure B) modified the assessment by sustaining a total addition of Rs. 7,500. Being aggrieved, the State filed appeal before the Tribunal. The same was dismissed as per order dated April 15, 2000 (annexure C). Subsequently the Tribunal issued a notice u/s 43 of the Kerala General Sales Tax Act, 1963 for rectification of the said appellate order and passed the order dated November 20, 2000 (annexure D) modifying the annexure C order to the prejudice

of the assessee. Hence this revision.

3. Learned Counsel appearing for the petitioner submits that the Tribunal has got the power to rectify the appellate order only if there is an error apparent on the face of record. The counsel submits that in the instant case, the only ground stated is that the original appeal was disposed of on the assumption that the said second appeal was filed by the assessee. According to the counsel, it is not a ground for rectification u/s 43. The counsel also submits that the original appellate order would clearly show that the Tribunal has considered the matter as if that is an appeal filed by the assessee and the appellate order was confirmed.

4. We have also heard the learned Government Pleader appearing for the respondent and had perused the orders of the Tribunal. The original appellate order would clearly show that the Tribunal has considered the said appeal as if it is one filed by the State and the Tribunal has considered the contentions taken by both the parties and had come to the conclusion that the order of the first appellate authority is just and reasonable. In these circumstances, we are of the view that the Tribunal was not justified in stating that the appeal filed by the State was originally so disposed as if it is an appeal filed by the assessee.

In the circumstances, we are of the view that the Tribunal has wrongly invoked Section 43 of the Act. Annexure D order is accordingly set aside and annexure C order is restored. This tax revision case is allowed in the manner as indicated above.