

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9301 OF 2003

ABRAHAM MATHAI

...APPELLANT

VERSUS

STATE OF KERALA

...RESPONDENT

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Kerala at Ernakulam in T.R.C.No.144 of 2001, dated 21.10.2002.

2. The appellant is a dealer in arrack licensed under the Kerala Abkari Act. The relevant assessment year is 1991-92. It is an admitted fact that the dealer for the purpose of sale of arrack had to purchase arrack only from the Kerala State Beverages Corporation (for short, 'the Beverages Corporation'). After completion of the assessment proceedings for the assessment year 1991-92, there was an inspection in the business premises of the appellant/assessee by the Intelligence Squad of the Sales Tax Department of the State of Kerala. In the inspection conducted, it was found that there was a shortage of 620.95 litres of Government sealed arrack and an excess of 620.95 litres of unsealed arrack in the bottles found in the business premises of the appellant/assessee.

3. After conducting mahazar and noticing the aforesaid fact, the Intelligence Wing of the Sales Tax Department had submitted its report to the assessing authority, who, in turn had issued notices to the appellant/assessee to re-open the assessment for the assessment year 1991-92. After receipt of the notice of the said re-opening, the appellant/assessee had filed its detailed reply, inter alia, bringing to its notice that the sealed bottles were opened and arrack was filled in unsealed small bottles for the purpose of convenience of supply to the customers, which is evident from the fact that both the shortage and the excess are of equal quantity. The assessing authority had not accepted the explanation tendered by the appellant/assessee and has concluded that there is suppression of the turn-over of the dealer and has calculated the said suppression six times of the quantity detected at the time of inspection. Accordingly, it had estimated the turn-over of the dealer amounting to a sum of Rs.12,19,123.50/- and thereafter had issued a show cause notice for payment of tax in a sum of Rs.7,37,176.37/- by way of tax, Rs.47,179/- by way of surcharge and Rs.19,196/- by way of turn over tax.

4. After service of the re-assessment order and the demand notice, the appellant/assessee had called in question the same before the First Appellate Authority. The First Appellate Authority after considering that apart from the stock variation found in the inspection, no actual case of suppression of unaccounted arrack was found, had modified the assessment by limiting the addition by three times from six times, accordingly, had quantified the turn-over of the appellant/assessee and also the tax liability both on the Sales Tax as well as on the turn-over tax.

5. Aggrieved by the said order passed by the First Appellate Authority, the appellant/assessee was before the Tribunal. The Tribunal by its order dated 08.12.2000 has confirmed the order passed by the First Appellate Authority.

6. Being aggrieved by the orders so passed by the Tribunal, the

appellant/assessee has preferred a Tax Revision before the High Court. The High Court, after detailed consideration of the lis between the parties, has come to the conclusion that the accounts were not fully posted at the time of inspection and there were stock variation found and therefore relying on the decision of this court in A.Raghavamma vs. A. Chenavamma, AIR 1964 SC 136, has dismissed the Tax Revision Case and confirmed the orders passed by the Tribunal and the First Appellate Authority. Aggrieved by the order so passed by the High court, the appellant/assessee is before us in this appeal.

7. Heard Shri Subramonium Prasad, learned counsel for the appellant/assessee and Mr.Ramesh Babu, learned counsel for the State of Kerala.

8. After going through the judgments and orders passed by the First Appellate Authority, the Tribunal as well as the High Court, we are of the considered opinion that none of these authorities have committed any error whatsoever, which would call for our interference. Accordingly, the Civil Appeal is dismissed. No order as to costs.

.....J.
(H. L. DATTU)

.....J.
(C. NAGAPPAN)

NEW DELHI;
DECEMBER 11, 2013
ITEM NO.107

COURT NO.3

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(s). 9301 OF 2003

ABRAHAM MATHAI

Appellant (s)

VERSUS

STATE OF KERALA

Respondent(s)

(With office report)

Date: 11/12/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s) Mr. Subramonium Prasad,Adv.
Mr.Rajiv Dalal,Barrister
Mr.Varun Tandon, Adv.

For Respondent(s) Mr. Ramesh Babu M.R.,Adv.

UPON hearing counsel the Court made the following
O R D E R

The Civil Appeal is dismissed with no order as to costs, in terms of

the signed order.

(G.V.Ramana)
Court Master
(signed order is placed on the file)

(Vinod Kulvi)
Asstt.Registrar