

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 4044 OF 2001

S. Unnikrishnan, Kerala

Appellant (s)

Versus

State of Kerala

Respondent (s)

(With office report)

Date: 27/04/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. T.L.V. Iyer, Sr. adv.
Mr. Subramonium Prasad, Adv.

For Respondent(s) Mr. Ashish Verma, Adv.

Mr. M.K. Sreegesh, Adv.
for Mr. K.R. Sasiprabhu, Adv.

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

The appeal is allowed. No costs.

(J.S. Rawat)
AR-cum-PS

[Singed order is placed on the record.]

(Kanwal Singh)
Court Master

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4044 OF 2001

S. Unnikrishnan, Kerala

Appellant (s)

Versus

O R D E R

The assessee is in appeal before this Court.

The facts necessary for the purpose of disposal of the appeal are as under:

For the sales tax Assessment Year 1991-92, assessment was completed by the Assessing Authority on 30th November, 1992, aggrieved against which, the assessee filed an appeal being STA No. 68/1993 before the Deputy Commissioner (Appeals) which was dismissed by the Appellate Authority on 23rd November, 1993. This order became final as no further appeal/revision was carried against the same.

The Deputy Commissioner (Admn.), after the merger of the order of the Assessing Authority with that of the Appellate Authority, which is a coordinate authority, suo motu revised the assessment framed by the Assessing Authority on 30th of November, 1992 in exercise of its power under Section 35 (2A) of the Kerala General Sales Tax Act, 1963 [for short "the Act"]. A direction was issued to the Assessing Authority to pass a fresh order as directed by the Deputy Commissioner (Admn.) in exercise of his suo motu powers under Section 35(2A) of the Act. The assessee filed an appeal being TA No. 28/1994 against the order of the Deputy Commissioner (Admn.) before the State Sales Tax Appellate Tribunal [for short "the Tribunal"]. In the meantime, in pursuance to the direction issued

by the Deputy Commissioner (Administration), the Assessing Authority passed a fresh order, aggrieved against which the appellant filed an appeal before the Deputy Commissioner (Appeals) which was dismissed. Thereafter the assessee filed an appeal being Appeal No. 194/1998 before the Tribunal.

The Tribunal clubbed Appeal Nos. 28/94 and 194/98 together and disposed them of by a common order. Holding that the suo motu power exercised by the Deputy Commissioner (Admn.) was valid, the Tribunal set aside the assessment and remitted the matter back to the Assessing Authority.

Aggrieved against the aforesaid order of the Tribunal, the assessee filed TRC No. 181/2000 in the High Court of Kerala at Ernakulam. The High Court, by the impugned order, set aside the orders passed by the Tribunal, Deputy Commissioner (Appeals) as well as by Deputy Commissioner (Admn.). The High Court concluded its order by recording " The appeal filed by the revision petitioner against Annexure-A will be restored to file and will be disposed of by the competent authority."

Aggrieved against the direction given by the High Court that the appeal against the order Annexure-A, which is the original order of assessment dated 30th November, 1992, be restored and disposed of by the competent authority, the present appeal by grant of special leave has been filed.

Counsel for the appellant states that the direction issued by the

High Court is redundant as the appeal against the order dated 30th November, 1992 had already been disposed of as far back as on 23rd of November, 1993, which had become final. Under the circumstances,

such a direction could not be issued. We find substance in this submission and accordingly, set aside the aforesaid direction issued by the High Court.

Since the State has not filed any appeal against the order of the High Court setting aside the order of the Tribunal or that of the Deputy Commissioner (Appeals) and Deputy Commissioner (Admn.), they have attained finality.

The appeal is allowed accordingly. No costs.

.....J.
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(ASHOK BHAN)

New Delhi;J.
April 27, 2006. (LOKESHWAR SINGH PANTA)