

(2006) 02 KL CK 0032

In the High Court Of Kerala

Case No : Writ Petition (C) No. 32580 of 2005 (C)

A. Kunhikoya Thangal

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Kerala Tax on Entry of Goods into Local Areas Act, 1994 — Section 15, 2, 7, 7(1), 8
Motor Vehicles Act, 1988 — Section 18

Citation : (2006) 2 ILR (Ker) 501 : (2007) 6 VST 432

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

**Advocate : C. Vathsalan, K. Rakesh Roshan and Thushara V, for the Appellant;
T.R. Ravi, Sr. Government Pleader, for the Respondent**

Judgement

Thottathil B. Radhakrishnan, J.—Petitioner challenges exhibit P4 notice issued by the competent authority calling upon him to file return under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (hereinafter referred to as "the Act"). It is the admitted situation that the petitioner had not filed returns in terms of Section 7(1) of the Act when the goods in question, namely, a vehicle was brought into the State. Nor did the authorities insist on his payment of tax while registration was granted within the State of Kerala. May be that Section 18 was ignored by the registering authority in the case of the petitioner at that point of time. The impugned notice is issued by the authority under the Motor Vehicles Act noticing that there had been no remittance under the Act.

2. Learned Counsel for the petitioner, challenging the impugned notice, urged that going by the provisions in Section 8(5), the impugned notice is time-barred. It is also urged that even if Section 9 is resorted to, the notice is time-barred. For the purpose of considering the submissions, it is necessary to refer to sections 7, 8 and 9 of the Act, which reads as here-under:

7. Returns. - (1) Every person liable to pay tax under this Act shall furnish returns in such form, for such period, by such dates and to such authority, as

may be prescribed.

(2) If any person liable to pay tax under this Act, having furnished a return under Sub-section (1), discovers any omission or incorrect statement therein, he may furnish a revised return before the expiry of three months from the last date prescribed for furnishing the return under that Sub-section.

8. Assessment. - (1) The amount of tax due from a person liable to pay tax under this Act shall be assessed separately for such period as may be prescribed.

(2) If the assessing authority is satisfied that the return furnished by a person liable to pay tax is correct and complete, he shall assess the amount of tax due from the person on the basis of such return.

(3) If the assessing authority is of opinion that the return furnished by a person liable to pay tax is not correct and complete, he shall serve on such person, in the prescribed manner, a notice requiring him, on a date and, at a place specified therein, to attend and produce or cause to be produced, all evidences on which the said person relies in support of his return, or to produce such evidence as is specified in the notice and on the date specified in the notice, and as soon as may be, thereafter, the assessing authority shall, after considering all the evidences which may be produced, assess the amount of tax due from the person.

(4) If a person fails to comply with the requirements of any notice issued under Sub-section (3), the assessing authority shall determine the purchase value of the goods under the proviso to Clause (n) to Section 2 to the best of his judgment and assess the amount of tax due from him.

(5) No order of assessment under Sub-section (3) or Sub-section (4) for any period shall be made after the expiry of three years from the last date prescribed for filing of returns for that period. If, for any reason, such order is not made within the period aforesaid, then the return so filed shall be deemed to have been accepted as correct and complete for assessing the tax due from such person.

9. Reassessment. - If, after a person liable to pay tax has been assessed u/s 8 for any period, the assessing authority has reason to believe that any purchase value or part thereof has, in respect of that period, escaped assessment or has been underassessed or assessed at a lower rate, then the assessing authority may, within five years from the date of the order of assessment of the particular period and after giving the person a reasonable opportunity of being heard, reassess the tax due from him.

3. Section 7(1) obliges every person liable to pay tax under the Act to furnish returns within the prescribed period. Section 8(2) provides that if the assessing authority is satisfied of the return so filed, the assessment shall be completed on the basis of the said return. Sub-section (3) of Section 8 provides that if the assessing authority is not satisfied of the return furnished, he shall issue notice

calling for materials as are stated in the said sub-section. If a person fails to comply with the requirements of a notice issued under Sub-section (3) of Section 8, the assessing authority can proceed under Sub-section (4) of Section 8 and complete the assessment going by the yardsticks provided in the said sub-section. In so far as taking recourse to Sub-sections (3) and (4) is concerned, Sub-section (5) of Section 8 provides that no order of assessment under Sub-section (3) or Sub-section (4) shall be made after the expiry of three years from the last date prescribed for filing returns of that period. The said sub-section provides that if for any reason such an order of assessment is not made within the period so prescribed, the return filed by the assessee shall be accepted as correct and complete. So much so, the resultant situation arising out of the deemed completion of assessment by virtue of second sentence of Sub-section (5) of Section 8 and the acceptance of the return under Sub-section (2) of Section 8 are not much different. However, in view of the categorical provisions in the second sentence of Sub-section (5) of Section 8, the first sentence of Sub-section (5) of Section 8 has to be incorporated and understood only in cases where a return has been filed. This is essentially the ratio of the decision of this Court in Kuruvilla Vs. Asst. Commissioner, . Learned Counsel for the petitioner made a very serious attempt to canvas before me that the ratio of the said decision requires reconsideration. For the reasons noticed, I am in complete agreement with the ratio of the decision of this Court in Kuruvilla Vs. Asst. Commissioner, . The challenge of the petitioner against exhibit P4 fails. The same is repelled.

4. Learned Counsel for the petitioner further urged that in view of the provision in Section 18 providing a restriction of registration, the statutory authorities under the Motor Vehicles Act ought to have cautioned him regarding the payment of entry tax and at this distance of time, it may not be appropriate to impose any penalty on the petitioner u/s 15 of the Act. Section 15 of the Act provides for a pre-decisional opportunity to show cause against imposition of penalty. Exhibit P4 is only a notice to file the return. As of now, it would be too premature a stage for this Court to go into that question. It is directed that the assessing authority will finalise the proceedings without any delay and if any order of penalty is proposed to be imposed u/s 15, the petitioner will be given opportunity of being heard, to show whether he had reasonable cause for not paying the entry tax within time. The period fixed as per exhibit P4 will stand extended, if the petitioner files return as called for in exhibit P4 within a period of three weeks from today.

5. Writ petition is disposed of in the above terms.