(2012) 06 KL CK 0057

In the High Court Of Kerala

Case No : Writ Petition (C) No. 9446 of 2012

Babu APPELLANT

Vs

Sales Tax Appellate Tribunal RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 23(3), 39

Citation : (2012) 4 KLJ 53 : (2012) 4 KLT 55 : (2012) 56 VST 525

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : C.A. Chacko and C.M. Charisma, for the Appellant; Shoba Annamma Eapen, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon

1. The question to be considered in this Writ Petition is whether the assessee, who is challenging an order passed under S. 17D of the K.G.S.T. Act by way of appeal, is liable to deposit the entire arrears due in respect of the said assessment year i.e., by way of tax, interest etc., by virtue of sub-s.(5) of S. 17D or will it be enough, if the tax portion alone is satisfied, so as to maintain the appeal under S. 39 of the K.G.S.T. Act. The petitioner was the Managing Partner of a firm, which was being run under the name and style as M/s. Best Traders, Kalpetta. The said firm was closed down because of the adverse circumstances in the year 2005. In respect of the assessment year 2004-05, the assessment proceedings came to be finalised by resorting to the course and procedure under S. 17D of the K.G.S.T. Act, leading to Ext. P1 assessment order, fixing the tax liability as Rs. 2,55,111/- and showing the interest due as Rs. 1,53,067/-.

2. Pursuant to Ext. P1 order, the petitioner was served with Ext. P2 demand notice, directing to deposit a sum of Rs. 2,55,111/- towards ''tax payable'' for the assessment year 2004-05 and a separate notice (Ext. P3) in respect of the

interest portion coming to Rs. 1,53,067/-. According to the petitioner, he has satisfied the tax amount and something more, as borne by Ext. P4 proceedings dated 28.1.2012 issued by the revenue authorities. After satisfying the tax as above, the petitioner preferred Ext. P5 appeal before the Tribunal, also giving the split up figures under Column No. 8, showing the liability. However, the appeal was noted as defective and the petitioner was let known vide Ext. P6 notice dated 9.3.2012, that the proof produced by the petitioner, i.e., the photocopies of the challan receipts for the remittance of tax due before the revenue authorities, was insufficient and the petitioner was directed to produce certificate issued from the concerned Commercial Tax Officer to the effect that the entire arrears have been paid for the year 2004-05, so as to have compliance of the requirements under S. 17D (5) and to have the appeal entertained on merits, which made the petitioner to approach this Court.

3. The learned Counsel for the petitioner submits that the course and proceedings pursued by the Tribunal, noting the appeal as defective, is not correct or proper and that the statutory prescription requires the petitioner to satisfy only the ''tax'' and not interest or any other amount.

4. The learned Government Pleader, on instruction, submits that, it is with the intent to attain finality to the entire proceedings, that the proceedings are pursued and finalized under S. 17D by a Team consisting of four members. If the said proceedings finalised by the Team constituted under S. 17D, were to be challenged, it is for the petitioner to satisfy the entire amount due in respect of the assessment year and as such, the Tribunal cannot be found fault with for having issued Ext. P6. It is also stated that the revenue authorities may not be in a position to say/ascertain as to what is the actual amount due in respect of the relevant period, which can be specified only by the concerned Commercial Tax Officer.

5. For better appreciation of the provision of law, it is worthwhile to extract the provision as it stands now. S. 17D(5) is extracted below:

Section 17D(5):

(5) Notwithstanding anything contained in any other provisions of this Act, appeals against the assessment orders issued under fast track method shall lie within forty five days to the Sales Tax Appellate Tribunal and no such appeal shall lie unless the dealer has paid the entire tax amount

(emphasis is supplied)

6. True, by virtue of the very nature of the statutory prescription and mode of assessment under S. 17D, presumably for attaining finality in respect of the assessment, the legislative wisdom while providing for further challenge, by way of appeal, has stipulated under sub-s.(5) of S. 17D of the K.G.S.T. Act, to have deposited the entire tax amount as a pre-condition. Going by the very terms of the Statute, it is evident that, unless the dealer has paid the entire tax amount,

no appeal shall lie. Then the question is what is the tax amount and will it include interest portion as well?.

7. During the course of hearing, the learned Counsel for the petitioner sought to place reliance on the decision reported in 2001 (2) KLT 100 (SC) (Maruti Wire Industries (P) Ltd v. Sales Tax Officer) with specific reference to paragraphs 1 and 7, which are extracted below:

1. Whether the appellant, an assessee, is liable to pay any penal interest on the assessed tax under S. 23(3) of the Kerala General Sales Tax Act, 1963 (hereinafter ''the Act'' for short), from the date when return was due though neither a return was furnished nor any tax paid on self assessment basis, is the question arising for decision in this appeal.

Paragraph 7:

7. The same issue which was dealt with by a three Judge Bench of this Court in the case of Associated Cement Co. Ltd. came up for the consideration of Constitution Bench in the case of J.K. Synthetics Ltd. (supra). This Court overruled the majority opinion and approving the minority opinion in Associated Cement Co''s case held that the provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions is a substantive law, not adjectival law, and interest cannot be recovered by way of damages for wrongful detention of the amount. This Court further held that the "tax payable" or "tax due" is that amount which becomes due ex hypothesis on the turnover and taxable turnover shown in or based on the return or as to which an order of assessment has been made.

8. The observation made by the Apex Court in the last sentence of the paragraph 7 makes it crystal clear that the "tax payable" or ''tax due" is that amount which becomes due ex hypothesis on the turnover and taxable turnover shown in or based on the return or as to which an order of assessment has been made. In other words, it does not give any idea that such amount, i.e., ''tax payable'' does not constitute interest portion. The proviso to sub-s.(5) of S. 17D categorically stipulates that the appeal will lie, if the dealer has paid the entire tax amount and the provision does not make any suggestion to the contrary, so as to have included the interest portion as well. In the above facts and circumstances, this Court finds that the contention raised by the petitioner is well founded. The ''tax amount'', as clearly given in Ext. P1 order being a sum of Rs. 2,55,111/-, which in turn has been demanded to be satisfied vide Ext. P2. The said liability has been satisfied by the petitioner as borne by Ext. P4 and there is no case for the respondents that the tax amount has not been satisfied, but for the interest portion. In the said circumstances, this Court finds that rejection of the appeal vide Ext. P6, noting the same as defective, is not correct or sustainable. Ext. P6 is set aside and the Tribunal is directed to take back Ext. P5 appeal to file and consider the same on merits, passing appropriate orders, in accordance with law, as expeditiously as possible.

The Writ Petition is allowed. No cost.