
(2005) 05 KL CK 0014
In the High Court Of Kerala
Case No : STR No"s. 162 and 165 of 2005

Benny Sebastian

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 35, 35(2A)

Citation : (2005) 2 ILR (Ker) 806 : (2005) 3 KLT 292

Hon'ble Judges : K.T. Sankaran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : N. Manoj Kumar and M. Rishikesh Shenoy, for the Appellant; Raju Joseph, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Petitioner herein is a sales tax assessee doing business in medical equipments. These Revision Petitions relate to the assessment years 1995-96 and 1996-97. The assessment was completed. Thereafter, a notice was issued by the Deputy Commissioner to revise the assessment suo motu. According to the Deputy Commissioner, the Intelligence Wing of the Department had detected purchase suppression on the petitioner"s accounts for the years 1995-96 and 1996-97. The offences were compounded and compounded penalty was paid. The petitioner filed a reply stating that the alleged purchases were not effected by them. Thereafter, Deputy Commissioner after issuing notice reopened the proceedings. The contention of the assessee was that merely because the offences were compounded, assessments cannot be reopened. When the Intelligence Officer found out certain suppressions after inspection and issued show cause notice, offences were compounded. We are of the opinion that the Deputy Commissioner was right in reopening the assessment suo motu in the above circumstances as Intelligence Officer found out certain alleged suppressions and assessee was not able to satisfactorily explain about the same at that time. But, when the Deputy Commissioner directed to re-assess, it was

also observed that there is no meaning in the contention that the purchases were not effected by the assessee and there is no need to grant further time. The Tribunal in appeal also observed that since the assessee has admitted the offences and compounded the offences, there is no meaning in contenting that the alleged purchases were not effected by the assessee and there is no ground to grant further time to collect details. u/s 35 of the Kerala General Sales Tax Act, the Deputy Commissioner can on his own motion, suo motu call for and examine any assessment order within the time limit prescribed u/s 35(2A) and after giving an opportunity to the assessee to be heard. Here, Deputy Commissioner issued show cause notice and heard the assessee before remanding the matter to the Assessing Officer for reassessment. Having compounded the offences, assessee cannot say that Deputy Commissioner went wrong in invoking Section 35 of the K.G.S.T. Act. We are of the view that even though the Deputy Commissioner is right in reopening the assessment and invoking Section 35, the assessee has freedom to submit in the reassessment proceedings that there was no suppression of purchases and by evidence he can substantiate his case on merit. All materials including the admissions can be taken by the Assessing Authority as relevant materials. But, merely because offences were compounded in penal proceedings, it cannot be stated that the assessee is debarred from contending on merits. A Division Bench of this Court in Velimpambil Hardwares v. State of Kerala 1993 (2) KLT 394 : (1994) 92 STC 98 ker, held that the facts found in the compounding proceedings may constitute a relevant material in the assessment proceedings. But, they are not conclusive in assessment proceedings. Madras High Court in Sundaresa Iyer & Sons v. Board of Revenue, (1971) 28 STC 430 Mad., held that compounding proceedings cannot be taken into account at all in assessment proceedings. We are of the opinion that an admission or an acquiescence while compounding the offence cannot be the sole foundation for an assessment and it is always open to an assessee to demonstrate and satisfy the Assessing Authority that a particular income is not taxable as held in Abdul Qayume Vs. Commissioner of Income Tax, . The assessee is free to prove before the authority that admissions made was under an erroneous impression of law or compounding was done only to purchase peace to avoid further litigation. But, it is for the assessee to establish that if any admissions are made, it was erroneous. Mere compounding of an offence is not an admission and the factum of compounding an offence to purchase peace can never be the sole foundation of assessment. A Full Bench of Karnataka High Court in S.V. Bagi v. State of Karnataka, (1992) 87 STC 138 kar held that once the compounding proceedings are over, neither the assessee nor the Government can file further appeals in that proceedings and that is conclusive and if compounding proceedings are not finalised, prosecution can be lodged. The same view was expressed by this Court (one of us - J.B. Koshy, J. was a party) in S. Viswanathan, Sivaram Electricals, Thiruvananthapuram v. State of Kerala (1999) 7 KTR 35 , i.e. once the matter being compounded, neither the assessee nor the Department can challenge the compounding order. But, in the reopened assessment proceedings, the assessee will be free to

substantiate his points with regard to the assessment and demonstrate that he is not liable to pay tax depending on erroneous admissions or compounding and it is for the Assessing Authority to consider the entire matter. He can also look into the proceedings of compounding also as held by the Division Bench of this Court earlier.

2. In the above circumstances, we modify the Sales Tax Appellate Tribunal's order and direct the Assessing Authority to pass fresh assessment order after giving an opportunity to the assessee to prove his case. Annexure D passed in pursuance of the Tribunal's order will stand quashed.

The Revision Petitions are allowed with freedom to the Assessing Authority to assess the matter afresh.