
(1976) 07 KL CK 0013
In the High Court Of Kerala
Case No : T.R.C. No. 18 of 1975

C.J. Joseph

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-07-1976

Acts Referred:

Central Sales Tax (amendment) Act, 1969 — Section 10, 10(1), 9

Citation : (1977) 6 CTR 44 : (1977) 1 ILR (Ker) 198

Hon'ble Judges : Govindan Nair, C.J

Bench : Single Bench

Judgement

Govindan Nair, C.J.—The short question raised in this revision is whether the conditions insisted upon by S. 10 of the Central Sales Tax (Amendment) Act, 1969 has been satisfied by the revision petitioner, the dealer who has been assessed to sales-tax. S. 10 of the Act is in these terms:

10. Exemption from liability to pay tax in certain cases - (1) Where any sale of good in the course of inter-State trade or commerce has been effected during the period between the 10th day of Nov., 1961 and the 9th day of June, 1969, and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Act had not been made, then, notwithstanding anything contained in S. 9 or the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Act, in respect of such sale or such part of turnover relating to such sale.

(2) For the purpose of sub-S. (1) the burden of proving that no tax was collected under the principal Act in respect of any sale referred to in sub-S. (1) or in respect of any portion of the turnover relating to such sale shall be on the dealer effecting such sale.

2. When notice was issued to the revision petitioner on the basis that we had collected tax, he sent a reply to the Sales Tax Officer, in which he stated:

We have not collected any sales-tax from our purchasers nor have we charged central sales-tax, in the invoices. Before the Supreme Court Ruling came which made such sales exempt from sales-tax, we have been showing the value of goods and the tax payable on such value separately. In such invoices we have charged and collected central sales-tax. But when the Supreme Court Ruling came before the relevant account year which made such transactions exempt from central sales tax we did not charge or collect from the purchasers sales-tax. If tax had been collected it would have been an offence even in view of the Supreme Court Ruling. Hence no prudent or reasonable dealer would charge or collect sales-tax to lose the same and to be prosecuted for an offence. But the purchasers insisted that in case such transaction became liable to tax with retrospective effect, they should not be held liable and that they should be called upon to pay the tax to the sellers. Hence as a warranty for the purchases, the words including sales-tax was inserted in the bills to show that even if the transactions were made liable to central sales-tax on change of law retrospectively, the purchasers are not liable to pay tax.

This representation is dated 27th December, 1969 and was received by the Sales Tax Officer on the same day and the assessment order was also passed on the very same day. The relevant part of the order relating to the contention of the revision petitioner that he had not collected tax is in these terms:

It has been admitted in his reply that he has collected tax on all sales from his purchasers as a precautionary measure along with the value of goods. Hence his reply is rejected. It is crystal-clear from the bills that he has collected tax on all sales along with the value of goods supplied in each bill and the tax so collected with the value of goods is payable to government under the provisions of the C.S.T. (Amendment) Act 28 of 1969.

3. On appeal before the appellate Assistant Commissioner, the Appellate Authority observed that the very fact that the value fixed is inclusive of tax shows that when the appellant collected the sale value, he has collected the central sales-tax due also. Therefore, it is clear that the appellant has collected central sales-tax during the period in question. In further appeal before the Sales-tax Appellate Tribunal, Trivandrum, the matter was dealt with even more briefly. The Tribunal observed.

Before the authorities below the appellant contended that he did not collect any tax and that therefore he is entitled to the benefit of exemption under S. 10 of the Central Sales-Tax (Amendment) Act. The same contention is reiterated before us also. But the Sales turnover as per the invoices is inclusive of tax as clearly stated therein. Therefore the appellant has actually collected tax on his inter-State sales during the year. The procedure adopted by the Sales Tax Officer is therefore only in order. The assessment in question is accordingly confirmed.

4. Counsel on behalf of the revision petitioner has raised two contentions before us. According to counsel, sufficient opportunity had not been granted to the revision petitioner to establish his contention that there has been actually no collection of tax from the person to whom he sold the goods notwithstanding the statement in the invoice that the prices stated therein was inclusive of tax. It was submitted that the objections were received by the Sales Tax Officer only on the day on which the order of assessment was passed and that no opportunity whatever was granted in the objection in case the Sales-Tax Officer felt that the case of the revision petitioner as stated in the objections was unacceptable without evidence. Reference was made to the decision of the Supreme Court in C.T. Officer, Bangalore vs. Oil Mills. At the end of paragraph 7 at page 1327 there is the following observation dealing with S. 10 of the Act:

The law gives a further opportunity to the assessee whose assessments are sought to be reopened to satisfy the assessing authorities that they had not collected tax in respect of the turnovers in question, of the Amendment Act. If so read, it is clear that the assessing authorities before reassessing the dealer should afford them reasonable opportunity to satisfy them that they have not collected tax.

The contention of counsel that there was no opportunity afforded to the revision petitioner appears to be well founded. But it does not appear that the revision petitioner complained about lack of opportunity either before the Appellate Assistant Commissioner or even before the Appellate Tribunal. Nor do we find any question of law raised in the revision petition on this aspect. Though three questions are raised in the revision petition this aspect of lack of opportunity has not been emphasised. In these circumstances, the order of the Tribunal cannot be set aside exclusively on the basis that the revision petitioner was not given an opportunity to substantiate his statements in his objections.

5. The second point urged by counsel was on the basis of the decision of the Mysore High Court reported in Bhaidas Cursonadas and Co. vs. Commercial Tax Officer. The facts of that case are almost identical, and the Mysore High Court held that the mere statement in the invoice that the amount collected is inclusive of tax is not sufficient to conclude that there has been collection of tax in the transactions so as to exclude the operation of S. 10 of the Act. The court observed that two factors would have to be established before the benefit of S. 10 of the Act was denied to an assessee : (1) The buyer had agreed to pay the sales tax in addition to the price and (2) the sellers account books should disclose the amount separately. Counsel very strongly relied on this decision. If the decision implies that when the assessee has denied collection the department must establish the two factors, with great respect, we are unable to agree with the decisions in view of the provisions in sub-S. (2) of S. 10. We think the decision cannot imply that the department must establish the factors. On the other hand, the decision emphasises that there must be material on the basis of which it is possible to say that tax has been collected notwithstanding the denial of

the assessee.

6. For S. 10(1) to be attracted it must be shown that the assessee has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Act. The latter part viz., no such tax could have been levied in respect of such sale or turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act have not been made, is established in this case. The revision petitioner has also stated that he had not collected any tax and gave an explanation for the statements in the invoices in his objection to the notice. This explanation as such had not been adverted to or considered by any of the authorities. The authorities have merely taken his explanation of the statements in the invoices as a denial of collection and have rejected that denial on the basis of the statements in the invoices. We are satisfied that the reasons given in the objection explaining the statement in the invoices, have not been considered by the authorities. There was also no advertence on the basis of the explanation of the revision petitioner to the account books or any other material. Further there was no material other than the statements in the invoices and those statements should not have been taken to be conclusive without rejecting the explanation of the assessee giving the reasons for the statements in the invoices, for cogent reasons. As we said there was not even a reference to the explanation of the assessee.

7. The Sales Tax Officer went to the extent of stating that the revision petitioner "has admitted in his reply that he has collected tax on all sales from his purchasers as a precautionary measure along with the value of goods". This is clear misreading of the explanation of the revision petitioner. His case specifically was that there has been no collection and he had given reasons explaining the statements contained in the invoices. As we said, there has been no advertence whatever to the reasons given by the revision petitioner and naturally there has been no consideration of the case of the revision petitioner. If the reasons could not have been relied on without advertence to the case of the revision petitioner, without investigating that matter, and without affording an opportunity to establish that matter, it is not proper to say that S. 10(1) was not attracted. The matter has been dealt with summarily by the Sales Tax Officer and by the appellate authorities, without an application of the mind to the contents of the explanation given by the revision petitioner for his statements in the invoices. The appellate authorities merely relied on the reasoning of the Sales Tax Officer which as we have seen proceeded on a wrong notion that the revision petitioner had admitted the collection of tax.

8. We, therefore, set aside the order of the Tribunal and remit the case back to the Tribunal for being dealt with in accordance with law. If the Tribunal is unable to accept the explanation in the objection filed by the revision petitioner to the

notice, the Tribunal will remit the case to the Sales Tax Officer with a direction that opportunity will be afforded to the petitioner to adduce evidence to substantiate the statements in the objection in answer to the notice. We dispose of this Tax Revision Case in the above terms and direct the parties to bear costs.