(1991) 07 KL CK 0068

In the High Court Of Kerala

Case No : T.R.C. No''s. 12 and 13 of 1990

Deputy Commissioner APPELLANT

Vs

Gopal Trading Company RESPONDENT

Date of Decision : 16-07-1991

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 12, 14(1), 14(2), 14(5), 14(7)
Kerala General Sales Tax Rules, 1963 — Rule 32, 32(14), 5, 5(12)

Citation : (1991) 07 KL CK 0068

Hon'ble Judges : K.P. Radhakrishna Menon, J;K.K. Usha, J

Bench : Division Bench

Advocate : N.N.D. Pillai, Government Pleader, for the Appellant; K.P. Dandapani, for the Respondent

Judgement

Radhakrishna Menon, J.—T.R.C. No. 12/90 arises from the order of the Tribunal, and relating to the assessment for the assessment year 1983-84 whereas T.R.C. 13/90 relates to the Assessment year 1984-85.

2. The short question arising for consideration is: Does Form 25 declaration, produced by the Assessee, conclusively prove that the purchaser of pepper from the Assessee is the last purchaser within the meaning of Section 5(1) of The K.G.S.T. Act, for short ''The Act''.

3. During the year 1983-84, the Assessee, it is submitted, had sold 200 quintals of pepper of the value of Rs. 2,20,000 to one Janatha Enterprises, Tellicherry covered by one Form 25 declaration. The dealings, the Assessee had with Janatha Enterprises, Tellicherry, Jyothi Traders, Tellicherry and Bhaskar Traders, Kalpetta during the year 1984-85, according to the Assessee, are covered by the respective Form 25 declarations produced by him before the assessing authority. The assessing authority was not satisfied with the genuineness of the transactions covered by Form 25 declarations and therefore issued pre-assessment notice to the Assessee calling upon him to submit his explanation as regards the objections (noted hereunder) raised therein.

(a) though Janatha Enterprises had the registration for the year 1983-84, it never had any transactions during that period and that it is so can be seen from, the nil return filed by it.

(b) during the year 1984-85 both Janatha Enterprises and Jyothi Traders, were not having the requisite registration.

(c) Bhaskara Traders did not have any transaction in hill produce and therefore it must be held that Bhaskara Traders had not purchased any such goods from the Assessee.

4. The Assessee filed his objections within the stipulated time. We shall now reproduce relevant portions from the said objections. The following pertains to the assessment proceedings for the year 1983-84:

We are ready to pay the tax on the local sales of pepper to Surag Traders as per Bill No. 115. But we have serious objections in disallowing exemption on the local sales of Black pepper to Janatha Enterprises, Tellicherry as per Bill No. 1 and 5 for Rs. 2,20,000. The reason stated by you for disallowing exemption is that no such dealer in Hill Produce. As per the K.G.S.T. Act and Rules local sales to a registered dealer within the State and obtaining Form 25 declaration is eligible for exemption from tax. Our sales is to a registered dealer under K.G.S.T. Act. So we are eligible for exemption. It is not our duty to verify whether a dealer is entitled to do business in a particular commodity. It is your own duty to check it and take action against them. Moreover, the Registration Certificate issued to them would not show any specific article to dealt by them.

The objections relating to the year of assessment 1984-85 read:

In the case of Bhaskar Traders, Kalpetta we invite your kind attention to the fact that they are registered dealers under K.G.S.T. Act. It is not correct to say that they are not dealers in Hill Produces. They have purchased goods worth Rs. 7,14,561.87 from us. That itself shows that they are dealers in Hill Produces. Moreover we invite your kind attention to another important fact that the above said Bhaskar Traders have despatched pepper to outside state on 26th June 1985 and 1st July 1985 for which evidence will be there in Feroke Check-post records. Please verify the same. Now also you say that they are not dealers in Hill Produce? If so we shall have some legal points. As per Rule 32(14) a dealer in the state, shall if he is not liable to tax on such goods by reason of he is not being the last purchaser in the state obtain declaration in Form 25 from the person to whom he has sold the goods. In compliance with this Rule we have obtained Form 25 declarations from M/s Bhaskar Traders.... In the case of Jyothi Traders, Tellicherry we submit that it is not correct to say that they have not stopped business with effect from 31st March 1984. The first and best evidence for this is that they had purchases from us during the year 1984-85. So, they are doing business for this year also. If they had reported stoppage of business and doing business, then it is the duty of the department to take action against them and assess them. The purchases are for Rs. 6,96,307.80 i.e., much more than the prescribed minimum turnover to be assessed as per the K.G.S.T. Act. Moreover, the department has not cancelled the Registration of the said party when they have issued Form 25 declaration to us.... In the case of Janatha Enterprises, Tellicherry also they are registered dealers. Their Registration has not cancelled by the department, when they had purchased goods from us. Since the purchases are for Rs. 11,24,879.13 i.e. much more than the prescribed minimum turnover, the said buyer will alone be liable to pay tax u/s 5(2) of the K.G.S.T. Act, and the department can assess tax from the said buyer alone....

5. The assessing authority was not satisfied with the explanation and consequently treated the Assessee as the last purchaser and included the purchase turnover of pepper, alleged to have been sold to the above traders, in his taxable turnover. The Deputy Commissioner before whom the Assessee had filed the appeals against the above assessment orders, concurred with the assessing authority. The appeals therefore were dismissed. The appellate tribunal who went into the question as to whether the findings which provided the basis for the assessment, are sustainable, elaborately, was of the view that the Assessee was not the last purchaser and accordingly directed the assessing authority to redo the assessments afresh. This common order of the appellate tribunal disposing of the appeals, is under challenge in these Tax Revision Gases.

6. The Assessee admits that during the assessment year 1984-85 neither Janatha Enterprises nor Jyothi Traders was having registration. Certain other aspects which, the Assessee has not accepted but at the same time are requisite and relevant to dispose of the issue, are: Janatha Enterprises during the year 1984-85 had submitted a nill return, Bhaskara Traders was having only retail business in grocery.

7. The registration granted in favour of Janatha Enterprises and Bhaskara Traders had not been cancelled at the relevant time, were registered dealers and as such Form 25 declarations issued by them, the assessing authority ought to have accepted is the first submission of the Assessee. The Assessee has a further case that the registration once granted will continue to be inforce until it is cancelled. Yet another case put forward by the Assessee it the cancellation of registration certificate subsequent to the issue of Form 25 declaration will not be of any consequence as regards his case that he is not the last purchaser. This contention relates only to the transaction with Bhaskara Traders.

8. We shall now search for the answer to the question posed in the case. The answer, we are of the view, depends upon, the construction of Clause 14 of Rules 32 of the K.G.S.T. Rules. We shall read the Rule now:

14. Every dealer in goods taxable at the point of last purchase in the State, shall if he is not liable to tax on such goods by reason of his not being the last purchaser in the State obtain a declaration in Form 25 from the person to whom he has sold the goods. Every purchaser shall issue such a declaration to the seller. The declaration so obtained shall be submitted to the assessing authority

on or before the twenty-fifth of the month succeeding that to which the sales relate alongwith a statement of such declarations showing the name and address of the dealers to whom the goods were sold with the particulars of sale bill, quantity, and value, and the total turnover covered by such declaration.

This Clause provides that the dealer who wants to have a declaration that he is not liable to tax on the sale of such goods, taxable at the point of last purchase by reason of his not being the last purchaser in the State, shall obtain a declaration in Form 25 from the person to whom he has sold the goods. The purchaser is bound to issue such a declaration to the seller. While submitting the said declaration in Form 25 the dealer is bound to file a statement showing the name and address of the dealer''s to whom the goods were sold, with the particulars of sale bill, quantity and value, and the total turnover of the said dealer covered by the Form 25 declarations. This in short is the scheme of the sub-section. The insistence on the production of the details like the name and address of the dealers to whom he sold the goods etc. by the Assessee, in our view, clearly reflects the intention of the legislature namely, that Form 25 declaration shall not be treated as providing conclusive proof of the genuineness of the transactions covered by it. It should in this connection be remembered that this provision is introduced to see that evasion of tax is avoided. The assessing authority therefore has to enquire into the genuineness of the transactions before he accepts Form 25 declaration and make the assessment, assessing authority in this regard can, if found necessary, even requisition the service of his counter-part within whose jurisdiction the purchaser who has issued Form 25 declaration, is having his business. The said assessing authority i.e. the counter-part thereupon shall conduct an enquiry and forward the report of the enquiry to the assessing authority. If the assessing authority, on a scrutiny of the said report is of opinion that the transactions covered by Form 25 declaration are fictitious or are not genuine then the assessing authority shall give the Assessee an opportunity to prove that the findings the counterpart of the assessing authority entered in the report, do not reflect the true state of affairs, before the assessment is made. It is relevant in this context to recall Section 12 which provides that the burden of proving that any transaction of a dealer is not liable to tax lies on such dealer.

9. This is not enough. The Assessee has also to establish that the dealer to whom he had sold the goods, at the relevant time was a registered dealer. To establish that that dealer was a registered dealer, it is enough if it is proved that he was the holder of a registration certificate. May be that the registration certificate was later cancelled. Such cancellation however, will not invalidate the Form 25 declarations issued at a time when the dealer was having the registration certificate, vide--Division Bench ruling of this Court--Dy. Commissioner of Sales Tax v. Debi Prasad 1991 (1) KLT 102.

10. As to whether the registration once given will continue to be in force until it is cancelled, we have to consider the scope of Sub-sections (5) and (7) of

Section 14 of the Act. The said Section read:

14. Procedure for registration--(1) An application for registration shall be made to such authority, in such manner and within such period as may be prescribed and shall be accompanied by a fee as specified below:

* * *

(5) A certificate issued under Sub-section (2) shall be valid for a year and sail be renewed from year to year on payment of the fee specified in Sub-section (1).

* * *

(7) The prescribed authority shall have power, for good and sufficient reasons, to cancel, modify or amend any registration certificate issued by it.

The plain and unambiguous language employed in Sub-section (5) makes it clear that the certificate issued under Sub-section (2) will be valid only for an year and the said certificate will continue to be valid for subsequent years provided the same is renewed from year to year on payment of the fees specified in Sub-section (1). It is such a certificate, whether originally issued or renewed from year to year which can be cancelled, modified or amended by the prescribed authority. To put it differently it is not as if that a certificate issued once will continue to be in force for ever irrespective of the fact whether it is renewed in the manner indicated in Sub-section (5) or not. The validity of a certificate comes to an end on the expiry of the one year period unless it be that it is renewed in the manner indicated in Clause 16 of Rule 5 of The K.G.S.T. Rules. This Rule provides that a registered dealer shall pay the fee for the renewal of the certificate specified in Sub-rule 12 for every year subsequent to that in which he applied for registration on or before the first day of May of the year for which the registration has to be renewed. The cumulative effect of Sub-section (7) of Section 14 read and understood in the light of the provisions contained in Clause 16 of Rule 5 is that if the registered dealer wants to enjoy the benefit of a certificate of registration, he is bound to get the registration renewed on or before the first day of May of the year for which the renewal is sought for. That means if the application for renewal is filed only after the expiry of the period mentioned above, the same will be rejected by the prescribed authority. Under such circumstances the dealer can at best apply for and obtain a fresh certificate of registration and that certificate will be valid for the period of one year from the date of the issue till the date on which he shall make an application for renewal in terms of Clause 16 of Rule 5.

11. It is in this background the question as to whether the dealer to whom the Assessee sold the articles at the relevant time was competent to issue the Form 25 declamation requires to be considered. On it being established that the purchaser of these goods at the relevant time was a dealer with a valid certificate of registration and that he in fact had purchased these goods, the Form 25 declaration issued by him, the assessing authority must accept and the

assessment made accordingly. Neither the Tribunal nor the authorities below had occasion to consider the question in the right perspective. We are therefore of the view that the Assessee shall be given a fresh opportunity to establish his case. The decision of the Madras High Court in State of Tamil Nadu v. Nava Bharath Enterprises (P) Ltd. (1983) 52 S.T.C. 235 relied on by the Counsel for the Assessee that the certificate of registration, though not renewed within the prescribed time, must be held to be valid for all practical purposes with respect, we cannot agree. Their Lordships had no occasion to consider the question as to what will be the consequence if the Assessee fails to apply for renewal within the prescribed period. The learned Judges, in our view, have proceeded on the basis that the certificates were got renewed in terms of the relevant provisions of the Act.

12. Yet another question that requires to be considered is what will be the effect of the cancellation of the registration in respect of Form 25 declaration given prior to the date of cancellation. It is unnecessary for us to go into this question in view of the decision of this Court in Dy. Commissioner of Sales Tax 1991 (1) KLT 102. In the light of this decision the answer to the question shall be in favour of the Assessee.

13. The question as to whether Bhaskara Traders, Kalpetta was having dealings in pepper at the relevant time does not appear to have been considered by any of the authorities in the light perspective. The authorities have proceeded on the basis that Bhaskara Trader''s is dealing only in groceries and as such the case of the Assessee that he had sold pepper to that trader cannot be accepted. Whether or not Bhaskara Traders was having dealings in pepper during the relevant period necessarily has to be considered provided of course, it is a registered dealer. This question also therefore requires to be considered afresh.

14. The Tribunal in our view has not considered the questions in the right perspective. The order therefore is liable to be set aside. The entire matter therefore requires to be considered afresh. We accordingly set aside the assessment order and the orders of the appellate authorities and direct the assessing authority to redo the assessment keeping in view the principles stated in the judgment. The assessing authority shall give the Assessee an opportunity to produce evidence in support of his various contentions before the matter is finally disposed of. The assessment for 1984-85 requires reconsideration. The order for 1983-84 is confirmed and 1984-85 is remanded for a de novo consideration. The exemptions already granted shall not be reopened.

The T.R.Cs. are allowed. No costs.