(1966) 06 KL CK 0027

In the High Court Of Kerala

Case No : O.P. No. 605 of 1965

Devji Gokuldas APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 27-06-1966

Acts Referred:

General Sales Tax Act, 1125 — Section 17(2A)

Citation : (1966) 10 KLJ 1038 : (1967) 19 STC 121

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.P. Gopalan Nambiyar, J.—The main prayer in this writ petition is to quash the assessment orders evidenced by exhibits P5 and P5(a) by which the petitioner was assessed to sales tax for the years 1961-62 and 1962-63. By a notice dated 3rd January, 1965, the petitioner was informed by the Ist respondent that the latter proposed to assess him to sales tax in the manner indicated therein. Prior to the said notice itself, the petitioner had in response to a demand of the 1st respondent produced his accounts before the 1st respondent. On receipt of the notice, the petitioner by his letter dated 16th January, 1965, requested the 1st respondent to return the account books to enable him to file his objections after the books were perused by his auditor. A copy of the communication is exhibit P2. This communication was refused by the 1st respondent; whereupon a communication was sent by registered post [vide exhibit P2(a)] by which the 1st respondent informed the petitioner that the account books relating to the above period were retained in his office for initiating penal action against the petitioner for violating the provisions of the General Sales Tax Act. The petitioner was informed that himself or his authorised representative may peruse the accounts in the office between 10 A.M. and 5 P.M. on any working day before 29th

January, 1965. On receipt of these communications, exhibits P3 series, the petitioner replied by exhibit P4 in which he denied that he was a dealer as defined in the General Sales Tax Act, 1125, and added that his objection to the proposed assessment contained therein was without prejudice to any facts, which he may state in future after perusal of the account books. Thereupon followed the impugned assessment orders exhibits P5 and P5(a).

2. The petitioner''s complaint is that he has been denied a reasonable opportunity of urging his objections to the proposed assessment and that the orders exhibits P5 and P5(a) cannot therefore be sustained. The gravamen of the complaint is that the 1st respondent was not justified in law in retaining the account books of the petitioner and in affording the petitioner and his auditor inspection of the accounts at the office during stated hours within a certain period. It is not shown and indeed it is not stated, under what power the 1st respondent could retain possession or custody of the petitioner''s account books. Admittedly, the accounts were not seized by the 1st respondent under the provisions of Section 17(2A) of the General Sales Tax Act, 1125, by an order recording in writing the reasons for such action. Section 17(2A) is wholly inappropriate to sustain the 1st respondent''s action. The withholding of the account books from the petitioner and the denial of an opportunity to the petitioner and to his auditor to go through the accounts themselves as desired, and thereafter to urge objections with reference to the accounts undoubtedly amounted to a denial of reasonable opportunity to the petitioner to show cause against the proposed assessment. On this ground, I allow the O. P. and quash the orders exhibits P5 and P5 (a). This will not preclude the 1st respondent from proceeding to assess the petitioner, if so advised, in accordance with law.

3. As I have already held that the withholding of the account books of the petitioner is unjustified, and as it is not seen under what provisions the 1st respondent can retain the account books, the petitioner''s prayer for a writ of mandamus directing the 1st respondent to return all the account books produced before him by the petitioner and acknowledged in exhibit P1 must be granted and I do so.

4. The O. P. is allowed as above. No costs.

