(2000) 01 KL CK 0019

In the High Court Of Kerala

Case No : O.P. No. 1159 of 2000-K

Eastern Rubbers APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala General Sales Tax Rules, 1963 — Rule 18, 21(9)

Citation : (2000) 119 STC 341

Hon'ble Judges : G. Sivarajan, J

Bench : Single Bench

Advocate : Arikkat Vijayan Menon, Harisankar V. Menon, Meera Harisankar and Binoy Jose, for the Appellant; V.M. Kurian, Senior Government Pleader, for the Respondent

Judgement

G. Sivarajan, J.—The main grievance of the petitioner in this original petition is that without completing final assessment under the Kerala General Sales Tax Act, 1963 for the years 1996-97 to 1998-99 and also provisional assessments for the months of April to October, 1999 the first respondent has issued exhibit P-I series notices demanding the tax for the said period. Learned counsel appearing for the petitioner submits that after filing of the annual return if the tax calculated in the said return is not acceptable, the remedy open to the assessing authority is to complete the assessment for the said years in accordance with law. He further submitted that for the months of April to October, 1999 also no provisional order as contemplated under Rule 21(9) of the Kerala General Sales Tax Rules, 1963 has been passed to enable the assessing authority to raise the demand. I have heard the learned Government Pleader also. He submitted that the assessments for the years 1996-97 to 1998-99 could not be completed for the reason that the books of accounts and other documents have been seized by the Income Tax department and still it is with them. He further submitted that it will take some more time for getting back all those documents for the purpose of completing the assessment. The Government Pleader also submitted that the amount demanded in exhibit P1 series is only on the basis of the returns filed by the petitioner. Of course, the concessional rate claimed by the petitioner could not be accepted.

2. Admittedly the petitioner has filed the annual returns for the years 1996-97 to 1998-89. The petitioner had also remitted the tax as calculated by it in the returns. If the same is not acceptable to the assessing authority, he has to complete the assessment as contemplated u/s 17(3) of the Act read with Rule 18 of the Rules. This admittedly has not been done. If that be so, exhibits P-1(a), P-1(b) and P-1(c) demands cannot stand. The said demands are accordingly quashed.

3. Now coming to the question of the demand under exhibit P-1(d), if the returns filed by the petitioner are not acceptable, the assessing authority can make a provisional assessment as contemplated under Rule 21(9) of the Rules and thereafter, raise the demand. This also has not been done. Therefore, without prejudice to the right of the respondents to make the provisional assessment as above, this exhibit P-1(d) also is quashed.

The original petition is disposed of as above.

Order on C.M.P. No. 1826 of 2000 in O.P. No. 1159 of 2000-K dismissed.

