
(2008) 08 KL CK 0019

In the High Court Of Kerala

Case No : S.T. (RV) No's. 50, 51 and 66 of 2008

Faizal C.M.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 23(3), 23(3A)
Kerala General Sales Tax Rules, 1963 — Rule 18(2)(A), 18(3), 21(7), 32(14)
Kerala Provisional Collection of Revenues Tax Act, 1985 — Section 4

Citation : (2008) 3 KLJ 774

Hon'ble Judges : V.K.Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : S.K. Devi, M. Raj Mohan, Santhosh P. Abraham, Frankur D. Jayan and Shanmugham D. Jayan, for the Appellant; Tekchand, GP, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Petitioners in the connected Sales Tax Revisions were dealers in Coffee, engaged in purchase and sale of coffee beans during 1998-99. Before the introduction of finance bill 1998, coffee beans was taxable at the point of first purchase in the State. However, in the finance bill introduced for the financial year 1998-99, the point of levy of sales tax on coffee beans purchased within the State was proposed to be changed from the point of first purchase to the point of last purchase in the State. Along with the finance bill declaration was also issued by the Government u/s 4 of Provisional Collection of Revenue Act 1985. Consequent upon the declaration published along with the finance bill the provisions of the bill came into force from first April 1998.

2. Therefore, by virtue of the change in the incidence of tax from the point of first purchase to the point of last purchase, petitioners were not liable for payment of sales tax on first purchase of coffee beans within the State. According to the petitioners, turn over of first purchase of coffee was claimed exempt in the monthly returns filed for the months of April to July, 1998. The petitioners' case is that the coffee purchased by them within the State were sold to Hindustan Lever Ltd., against issue of Form No. 25 by which Hindustan Lever

Ltd. declared themselves as purchasers of coffee from the petitioners within the State. Form No. 25 prescribed under Rule 32(14), issued by Hindustan Lever confirmed their purchase within the State and unless they sell the goods within the State again, they will be liable to pay tax as last purchasers in the State.

3. While the position remained so, the finance bill 1998 was passed by the Assembly and notified on 28.07.1998. However, proposal for amendment for changing the point of levy of tax on coffee beans was given up and the original provision that is tax on first purchase was retained. Consequently, petitioners became liable for payment of tax on first purchase of coffee within the State for the whole year. Even though the Finance Act was notified on 28.07.98, petitioners neither filed revised monthly returns declaring the first purchase turnover of coffee for three months. April to July, as taxable turnover nor remitted the tax along with such returns or even in the annual return filed in Form 8 for the year 1998-99.

4. However, later at the request of the assessing officer, petitioners filed revised annual returns declaring the first purchase turnover of coffee as taxable turnover for the financial year and remitted the tax. In the regular assessment made for 1998-99, the assessing officer levied interest u/s 23(3) of the Act. Even though first appeals filed against demand of interest were allowed, the Tribunal on Second Appeals restored the interest demand from the petitioners for belated payment of tax. It is against this order of the Tribunal the petitioners have filed these revision petitions.

5. We have heard Counsel appearing for the petitioners and the Government Pleader appearing for respondents.

Counsel appearing for the petitioners, by referring to Annexures 2 to 3 produced along with these revisions, contended that Hindustan Lever, being the purchasers of the coffee from the petitioners, have remitted tax at the point of last purchase and consequent upon passing of the Finance Act 1998, they are allowed to adjust the excess tax paid towards the other tax liability vide Annexure 3. Annexure 3 was stated to be issued after petitioners filed revised returns along with remittance of tax.

6. According to the petitioners, interest payable u/s 23(3) of the KGST Act is compensatory in nature and since the tax was paid on the same goods by the purchaser by virtue of the provisions of the Finance Bill and since adjustment of tax against other demand was permitted to them only after the remittance of tax by the petitioners, there was in fact no delay in payment of tax and so much so interest cannot be demanded.

7. Counsel further pointed out that after passing of the Finance Act 1998, the assessing officer did not make any provisional or regular assessment or demanded tax for the first four months of the finance year 1998-99 from the petitioners. In other words, petitioners contend that there was no default in payment of tax and consequently default interest is not payable u/s 23(3) of the

KGST Act. Government Pleader on the other hand contended that, by virtue of Rule 18(3) of the KGST Rules, petitioners were liable to pay interest along with revised returns which have been filed under Rule 18(2)(A) of the Rules. The respondent has sought for confirmation of the Tribunal's order based on Rule 18(3) of the KGST Rules.

8. We have gone through the impugned orders and we find that the Section under which interest is demanded is wrongly quoted as Section 23(3) as against Section 23(3A) of the KGST Act. The new Sub-clause 3A which was introduced to Section 23 of the Act with effect from 01.04.1998 is extracted hereunder for easy reference.

Section 23(3A) Where any dealer has failed to include any turnover of his business in any return filed or where any turnover has escaped assessment, interest under Sub-section (3) shall accrue on the tax due on such turnover with effect from such date on which the tax would have fallen due for payment had the dealer included the same in the return relating to the period to which such turnover relates.

9. It is clear from the above provision that interest is payable for any delay in payment of tax either on account of the dealer failing to return any turnover of his business or otherwise the turnover has escaped assessment. In fact, by introducing this Sub Clause, the liability for interest under Clause 3 to Section 23 is made applicable to every situation where tax happened to be paid beyond the due date provided under the provisions of the Act and Rules. Rule 21(7) of the Act provides for filing of monthly returns and payment of tax along with monthly returns on or before 10th of succeeding month. There may be situation where a dealer failed to file return or even if filed, failed to include full turnover, or even misclassified turnover leading to short payment of tax. Sub-clause 3 A provides for collection of interest in all situations leading to short payment of tax along with the return.

10. Even though Counsel for the petitioners contended that petitioners had in fact included the turnover in the monthly returns filed for April to July 1998 and there is no escapement of turnover for the purpose of assessment, we are unable to accept the same because escapement of turnover for the purpose of Section 23(3A) can happen even when taxable turn over is returned as exempted turnover or where turnover is not returned under the appropriate classification for rate of tax. As already stated above, Sub-section (3A) of Section 23 of the Act, covers all situations of non payment or short payment of tax. So far as the tax actually payable under the Act in this case is concerned, petitioners admittedly filed returns showing the first purchase turn over of coffee from April to July as exempted turn over by virtue of the provisions of the Finance bill 1998. However, when the finance Act was passed, the returns so filed happened to be wrong because the proposal for shifting of incidence of tax on coffee beans to last purchase was given up. When the returns happened to be wrong, after the passing of the Finance Act 1998, it was the duty of the petitioners to file revised

returns for all the four months under Rule 18(2)A of the KGST Rules. Rule 18(3) provides for payment of interest along with revised returns. In fact Rule 18(3) is only a procedure and the liability for payment of interest for short payment or non payment of tax, as already stated, is under Sub-sections (3) and (3A) of Section 23 of the KGST Act.

11. The next question to be considered is whether the petitioners are liable to remit interest because Hindustan Lever Limited, the purchaser of the same goods from petitioners has remitted tax along with returns filed by them in terms of Finance Bill. Counsel specifically contended that there is no delay in receipt of tax by Government because the purchaser remitted tax on the same goods and therefore demand of interest from the petitioners is arbitrary. We do not think, we can introduce any principle of equity herein because we are considering only the case of petitioners independently and not in relation to Hindustan Lever Ltd. In fact, all what is stated in Annexure 2 and 3 is that, Hindustan Lever has issued Form No. 25 for the purchase from the petitioners and they were allowed to adjust taxes paid by them on the purchase of coffee against other liability. There is nothing to indicate as to when the coffee purchased by Hindustan Lever Limited from petitioners acquired the quality of last purchase and when exactly tax was paid by Hindustan Lever Limited. In other words, there is nothing on record to indicate that taxes on very same goods were paid by Hindustan Lever Limited at least in the months in which it was payable by the petitioners. Petitioners' liability to remit tax on first purchase is independent of the entitlement for refund by Hindustan Lever Ltd. So long as tax is payable on the first purchase point or last purchase point, it cannot be collected and it is the absolute liability of the dealer engaged in purchase. Therefore, petitioners' liability to pay tax is independent of Hindustan Lever Limited's liability for payment of tax and their entitlement for refund. Moreover, default interest payable u/s 23(3) and 23(3A) are not only compensatory in nature but are provided in the statute, essentially, to ensure timely recovery of tax. The situation in this case is also clearly covered by statutory provisions. Once a declaration is issued u/s 4 of the Kerala Provisional Collection of Revenues Tax Act, 1985 the declared provisions of the Finance Bill will be effective from the first day of April. By virtue of declaration so issued along with the Finance Bill petitioners were entitled to claim exemption on the first purchase of coffee from April to June 1998. However, by the time return for July 1998 was due i.e., 10th August 1998, the Finance Act 1998 was already notified on 28.07.98 and therefore there was no justification for the petitioners to claim exemption on the first purchase turnover of coffee in the monthly return filed for July 1998.

12. So far as the first three months are concerned, if the petitioners had filed revised monthly returns after passing of Finance Act in terms of Rule 18(2)(A) of the KGST Rules, they could have avoided interest completely. It is only on account of this omission, petitioners became liable for payment of interest under Sub-section (3A) read with Sub-section (3) of Section 23 of the Act. However, we feel petitioners are not liable to pay interest on the first purchase turn over of

coffee for April, May and June until 10th August, 1998, when they could have filed revise returns along with payment of tax. However, since interest payable for the delayed payment of tax from 10th August 1998 till date of payment, we dispose of all the ST(RV)s by setting aside the Tribunal's order to the limited extent indicated above. The assessing authority is directed to make modification in demand without any delay.