(2006) 11 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (C) . No''s. 15616 of 2006-H and 17364 of 2006-P

Favaz Timber Industries APPELLANT

Vs

Intelligence Officer (Investigation Branch) and Another RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 28, 28(1), 28(2), 28(3), 28(5)
Kerala General Sales Tax Rules, 1963 — Rule 34, 34(9), 72

Citation : (2006) 4 ILR (Ker) 818 : (2007) 8 VST 429

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : Bobby John and P.N. Damodaran Namboodiri, for the Appellant; M.A. Fayaz, Government Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The question that arises for decision in these writ petitions is as to what, if any, is the time-limit for returning the documents produced following a notice issued in terms of Section 28(1) of the Kerala General Sales Tax Act, 1963 ("the Act", for short).

2. A notice in form 51, under Rule 72, of the Kerala General Sales Tax Rules, 1963 ("the Rules", for short), was issued to the petitioner, a dealer, directing production of books of account for the year 2003-04. He produced books of account on November 25, 2005. According to him, the first respondent verified the books of account and, issuing exhibit P3 receipt, seized them, without any authority. Contending that the said documents are not returned and that, at any rate, they cannot be retained indefinitely, W.P. (C) No. 15616 of 2006 is filed seeking a direction for releasing the seized records. Pending consideration of that case, a notice u/s 45A of the Act, proposing imposition of penalty, was served on the petitioner. Apprehending that the proceedings on the basis of that notice would be finalised, the petitioner filed W.P. (C) No. 17364 of 2006 on which an interim order was granted on July 4, 2006 staying further proceedings on the basis of that notice (exhibit P5).

3. Statements are filed on behalf of the first respondent alleging, among other things, that the books of account and other documents were called for in view of certain reports by the Commercial Investigation Wing as to the possibility of suppression of sales turnover by the petitioner. However, the first respondent does not contend that there was ever a seizure as alleged by the petitioner.

4. Since notice u/s 45A of the Act has been issued and the proceedings are yet to be finalised, no reference is being made in this judgment to the contentions touching the issues that would be involved in the said penalty proceedings.

5. Section 28 of the Act confers a power to order production of accounts and also powers of entry, inspection, etc. Sub-section (2) thereof relates to entry and inspection and Sub-section (3) deals with search, while Sub-section (1) empowers the issuance of an order for production of accounts, registers, records and other documents, but enjoins the issuance of a notice to the dealer. Sub-section (5) provides the power to seize, upon inspection or search. Sub-sections (7), (8) and (8A) are also provisions relating to inspection or search.

6. Rule 72 of the Rules provides that a notice for production of accounts shall be issued in form No. 50 and a summons for appearance of any person with certain documents shall be issued in form No. 51, the one in which, the notice to the petitioner is issued.

7. Neither Rule 72 of the Rules nor Section 28(1) of the Act provides any time-limit within which the documents have to be returned to the dealer.

8. However, the learned Counsel for the petitioner argued that Sub-rule (9) of Rule 34 provides outer, time-limits of thirty days and sixty days, respectively, for return of documents unless the seized documents are required for prosecution and that such permissions are mandatory. In support, he relied on the decisions of this court in P.K. Ramanujam v. Intelligence Officer [1996] 100 STC 414 KER : [1995] 2 KLT 14 at page 30, Joseph Antony and Another Vs. Deputy Commissioner of Agricultural Income Tax and Sales Tax and Others, and Edakalathur Traders v. State of Kerala [2004] 12 KTR 90.

9. Rule 34 deals with search and seizure of documents. Sub-rule (9) of Rule 34 provides that accounts and registers which are seized, shall be returned to the dealer within a period of thirty days unless permission is sought for from the next higher authority under Sub-section (6) of Section 28 and even then, the seized documents will have to be returned within sixty days, unless the said documents are required for a prosecution. The power to order production of accounts is referable to Section 28(1) of the Act and therefore, a notice to produce documents or a summons to a person to appear with certain documents in terms of Rule 72 in form No. 51 cannot be equated to search and seizure of documents that would be governed by Rule 34. The precedents relied on by the learned Counsel for the petitioner have no application since those cases related to search and seizure and not to any action taken u/s 28(1) calling upon the dealer to produce documents. It is impossible to import the time-limits

prescribed in Sub-rule (9) of Rule 34 into a proceedings that would be governed by Section 28(1) of the Act for which summons or notice is issued in form No. 51 in terms of Rule 72 of the Rules. Hence, there is no time-limit fixed by the Act or the Rules for return of documents produced by a dealer on the basis of a notice issued in form No. 51.

10. Having so found, the question that arises is, whether, in the absence of any statutory prescription either by way of primary legislation or subordinate rules prescribing a time-limit for the return of documents which were produced following a notice issued in terms of Section 28(1) of the Act, the authority receiving the documents is entitled to retain them for any indefinite period and whether there should be any reasonableness regarding the time-frame ? In W. A. No. 3666 of 2001, the division Bench of this court had occasion to consider a situation where the statute and the subordinate rules that fell for consideration in that case did not prescribe a time-limit for doing a particular act, i.e., the consideration and issuance of permits, etc. It was held that the situational requirement has always to be judged and even if a period is not prescribed, a reasonable period has to be applied for such purposes. The said principle has been followed by me in W. P. (C) Nos. 35305 of 2005 and 7008 of 2006. Having regard to the said proposition of law, there will be no justification for an authority exercising power u/s 28(1) of the Act to retain the documents beyond a reasonable period. If the authority requires the copies of the documents for its purposes, it will be open to it to have copies of the documents kept under due certification. The dealer or the person producing the documents can also be required to authenticate the copies. Such a course will also rule out any tampering of the original by the dealer, thereafter, as apprehended by the first respondent in the statement filed in these cases.

11. Books of account and other documents which are regularly kept in the usual course of business of a dealer are required to be kept in the place of business not only for the purposes of the Act but also in obedience to various other legislations, including other fiscal statutes. The rule also enjoins the retention of photostat copies with the seal of the department, wherever it is necessary. Hence, the contentions of the first respondent that the dealer was allowed to take photostat copies of the entire records from the Investigation Branch and that the release of the books may open an opportunity for the dealer for correction of entries do not stand. In this view of the matter, it is not permissible for the authority before whom documents are produced u/s 28(1) to retain them indefinitely. On the one hand, is the requirement of the department, in public interest, to peruse books of account and other documents which it is entitled to call for; on the other, is the right of the dealer to have custody of such books of account and other documents which are required in the usual course of business and also to be kept in the premises of business in terms of different laws. Balancing the interest of the Revenue and the dealer, the department should return the documents within a fortnight of their production. Otherwise, it would be unreasonable and unjust.

12. Having regard to what is stated above, these writ petitions are disposed of in the following terms:

I. The documents produced by the petitioner, following exhibit PI notice in W.P. (C) No. 17364 of 2006, shall be returned to the petitioner within a period of two weeks from the date of receipt of a copy of this judgment, if necessary, after retaining copies of the same. If the first respondent so requires, the petitioner or its authorised representative shall certify the said copies as true copies of the originals.

II. The proceedings initiated as per exhibit P5 in W.P. (C) No. 17364 of 2006 shall be finalised only after affording the petitioner an opportunity of filing objections after issuance of the documents in terms of direction No. I above.

