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(1997) 11 KL CK 0030

In the High Court Of Kerala

Case No : O.P. No. 11600 of 1997-E

Genlite (P) Ltd. APPELLANT

Vs

Additional Sales Tax Officer and Another RESPONDENT

Date of Decision : 05-11-1997

Acts Referred:

Kerala General Sales Tax Rules, 1963 — Rule 21(10), 21(7), 21(9)

Citation : (2003) 133 STC 422

Hon'ble Judges : G. Sivarajan, J

Bench : Single Bench

Advocate : K.B. Mohamed Kutty, for the Appellant; V.M. Kurian, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

G. Sivarajan, J.—The petitioner, is a dealer in diesel generator sets and an assessee on the files of the first respondent. According to the petitioner, diesel generator sets falls under item No. 77 of the First Schedule of the Kerala General Sales Tax Act, 1963 taxable at ten per cent. It is stated that the Government have issued various notifications u/s 10 of the Act reducing the rate of tax on diesel generator sets from ten per cent to one per cent. The petitioner has produced the last of such notification as exhibit P1. Claiming benefit under such notification the petitioner filed monthly returns for the months of November and December, 1996 and also for February, 1997 and the tax due one per cent was also remitted. The assessing authority thereafter issued form 14D notice demanding the tax at ten per cent as per exhibits P5, P6 and P7 demand notices. The petitioner challenges the said demand notices.

2. A statement is filed on behalf of the first respondent. It is stated that the first respondent issued notice dated January 21, 1997 stating that the item sold by them is taxable at ten per cent. It is stated that the petitioner filed objection to the above and contended that it is taxable only at one per cent and the payment made by them is right. It is further stated that from the assessment records it is

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seen that the petitioner has filed application to amend their CST registration certificate including manufacturing activities besides resales and to include certain items of goods they intend to purchase for resale and certain other items for manufacturing activities and packing of goods. It is stated that since the petitioner remitted tax on the turnover of diesel generators for the months of 11/96, 12/96 and 2/97 only one per cent demand notices in form 14D as contemplated under Rule 21(10) of the Kerala General Sales Tax Rules, 1963 was issued directing the petitioner to remit the balance tax.

3. I have heard the learned counsel appearing for the petitioner and the learned Government Pleader.

4. As per the provisions of Rule 21(7) of the Kerala General Sales Tax Rules, an assessee whose turnover exceeds the taxable limit is obliged to file a return disclosing the turnover of the previous month and to produce challan receipt evidencing the payment of the tax due as per the said return. If the petitioner files the return without paying the tax due as per the said returns, the assessing authority is entitled to issue form 14D demand notice as contemplated under Rule 21(10) of the Kerala General Sales Tax Rules. On the other hand, if the assessee does not file a return or if the return filed by the assessee is not acceptable to the assessing authority, it is open to the assessing authority to assess the tax due by following the procedure under Rule 21(9) and to issue notice in form 13. Thereupon the dealer is liable to pay the sum demanded therein within the time and in the manner specified in the notice. In the instant case, though the assessing authority had issued notice invoking the provisions of Rule 21(9) of the Kerala General Sales Tax Rules, he did not pass any orders as contemplated in the sub-rule nor issued any demand notice in form No. 13. What is done by the assessing authority is to issue a demand notice in form No. 14D without passing an order under Rule 21(9) of the Kerala General Sales Tax Rules.

5. In such circumstances it has to be held that the demand notice exhibits P5, PG and P7 are not in accordance with the law. Accordingly they are quashed. However, there will be a direction to the first respondent to complete the assessment of the petitioner for the year 1996-97 expeditiously, if the assessment for the said year had not already been completed.

The original petition is allowed as above. In the circumstances, there will be no order as to costs.

Order on C.M.P. No. 20576 of 1997 in O.P. No. 11600 of 1997-E, dismissed.

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