**(2006) 03 KL CK 0093**

**In the High Court Of Kerala**

**Case No :** O.P. No. 16083 of 2000 (M)

Gramox Paper and Boards Ltd. APPELLANT

Vs

Sales Tax Officer RESPONDENT

**Date of Decision :** 14-03-2006

**Acts Referred:**

Kerala General Sales Tax Act, 1963 — Section 23(3), 45A, 5A
Kerala General Sales Tax Rules, 1963 — Rule 21(7)

**Citation :** (2007) 7 VST 528

**Hon'ble Judges :** C.N. Ramachandran Nair, J

**Bench :** Single Bench

**Advocate :** K.B. Muhamed Kutty, for the Appellant; T.R. Ravi, Government Pleader, for the Respondent

## Judgement

C.N. Ramachandran Nair, J.—The petitioner is challenging exhibit P2 whereunder interest is demanded by the assessing authority u/s 23(3) of the Kerala General Sales Tax Act, 1963 for the years 1995-96 and 1996-97 on the tax payable on the purchase turnover of fuel, raw material, etc., used by the petitioner for manufacture of products. According to the petitioner, the petitioner claimed exemption on purchase turnover of fuel and other items based on decision of this Court in State of Kerala Vs. M/s. Vattukalam Chemicals Industries, . However, the Supreme Court has reversed this decision in the decision in State of Kerala v. Vattukalam Chemical Industries reported in [2001] 124 STC 233 KER : [2000] 8 KTR 103 whereunder the Supreme Court held that industries granted sales tax exemption are not entitled to exemption from tax on purchase turnover of goods on which they are liable to pay tax u/s 5A of the Kerala General Sales Tax Act. The petitioner has produced the returns filed for 1996-97 and 1997-98 which show that petitioner has not declared any taxable turnover u/s 5A. So much so, tax on purchase turnover was not payable under the returns filed and the petitioner cannot be expected to remit tax along with monthly returns furnished under Rule 21(7) of the Kerala General Sales Tax Rules, 1963. Therefore, tax became payable as and when regular assessments were completed and tax is demanded. Counsel reported that the petitioner has wrongly paid the tax without any contest after assessment and there is no default in payment of tax for any period. If that be so, there is no scope for levy of penal interest as interest is payable only for default in payment of tax payable under the return or tax payable based on notice of demand served after assessment, whether provisional or regular. Since counter is not filed by the assessing officer, the original petition is disposed of directing the officer to verify the returns, assessment and tax payments made by the petitioner for 1996-97 and 1997-98 and if it is found that petitioner has not paid tax on turnover admitted as taxable u/s 5A as disclosed in returns or if the petitioner has delayed payment of tax after service of demand notice along with assessment, then he can demand interest for such period of default. However, if any interest is proposed to be demanded, the petitioner should be given notice giving justification for demand, hear petitioner''s objection and pass orders demanding interest. If interest is not payable, he will issue proceeding stating that there is no default, and drop the proposal for levy of interest and communicate the same to the petitioner. For period subsequent to publication of decision of the Supreme Court in State of Kerala Vs. M/s. Vattukalam Chemicals Industries, if the petitioner has not declared taxable turnover in respect of purchase turnover, then it would be open to the officer to consider penalty u/s 45A as there is no justification for non-payment of tax after the decision of the High Court of Kerala is reversed by the Supreme Court and law declared by the Supreme Court. If penalty is considered, the officer is free to limit it to the interest liability to compensate the State for delay in payment of tax after decision of the Supreme Court.

2. Order on C. M. P. No. 26283 of 2002 in O. P. No. 16083 of 2000 dismissed.

 