
(2009) 03 KL CK 0024
In the High Court Of Kerala
Case No : S.T. Rev. No. 184 of 2008

Haru Adhikari

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29A(4), 35

Citation : (2009) 2 KLT 981 : (2010) 27 VST 100

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

Bench : Division Bench

Advocate : V.P. Sukumar, P.U. Mathen and Jairam V. Menon, for the Appellant;
V.K. Shamsudeen, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran, J.—The petitioner is a dealer in sanitary items, G. I pipe, fittings, etc. The sales tax assessment was completed by the assessing officer during the year 1995-96 accepting the books of account. However, the Deputy Commissioner later noticed that the petitioner was subjected to penalty by the Intelligence Officer in respect of transport of consignment of goods u/s 29A(4) of the Kerala General Sales Tax Act, 1963. Based on the penalty levied u/s 29A(4) the Deputy Commissioner set aside the assessment order and remanded the case back to the assessing officer for fresh assessment after taking into account the penalty levied by the Intelligence Officer. The original assessment was completed on December 1, 1998 and the Deputy Commissioner passed orders u/s 35 on June 3, 2002. Revised assessment was completed by the assessing officer pursuant to the orders issued by the Deputy Commissioner on May 29, 2005. While revising the assessment pursuant to order issued u/s 35 by the Deputy Commissioner, the assessing officer revised the rate of tax on pipe fittings used for sanitary purpose at the rate of 10 per cent as against four per cent originally applied. The case of the petitioner is that in appeal filed against the assessment, the petitioner raised a contention that the assessing officer has

no jurisdiction to revise the rate of tax on pipe fittings used for sanitary work from four per cent to 10 per cent because the Deputy Commissioner in his orders issued u/s 35 had not considered such an issue. According to the petitioner the assessment in all other respects had become final and, therefore, the assessing officer is bound to only comply with the directions contained in the order of the Deputy Commissioner. The petitioner has also contested the rate of tax on galvanised pipe fittings on the merits. The petitioner could not succeed in two level appeals and hence this revision is filed against the order of the Tribunal.

We have heard counsel appearing for the petitioner and the Government Pleader appearing for the respondent.

2. The first question to be considered is with regard to the petitioner's dispute against the rate of tax applied on pipe fittings. According to the petitioner the pipe fittings sold are G.I. pipes and therefore, the items fall under entry 2(k) of the Second Schedule to the KGST Act are taxable at four per cent. According to the Government Pleader sanitary equipments and fittings fall under entry 149 of the First Schedule to the KGST Act. The items sold are galvanised iron pipe fittings used for water supply and in sanitary equipment and fittings. The question to be considered is whether the item would come under the Second Schedule, item 2(k), which provides for steel tubes, both welded and seamless, of all diameters and lengths including tube fittings. We do not think G. I. pipe fittings fall under entry 2(k) because the items referred to therein are only steel tubes and tube fittings. Galvanised iron pipes and pipe fittings are steel pipes and fittings coated outside and inside with zinc to make it rust-proof. Steel tubes and galvanised steel tubes are different products. Similarly tube fittings when galvanised, i.e., on coating with zinc become commercially different and there is substantial value addition in the process of galvanisation. The Second Schedule does not cover galvanised steel tubes or galvanised steel tube fittings. Therefore, the items sold by the petitioner are not covered by entry 2(k) of the Second Schedule. There is no dispute that the items are used as water supply and sanitary equipment and so much so the rate of tax applied at 10 per cent during the year 1995-96 under entry 149 of the First Schedule is correct. We therefore reject this contention.

3. The next question raised is whether the assessing officer has jurisdiction to revise the original assessment of the turnover of G.I. pipes and G.I. pipe fittings from four per cent to 10 per cent under entry 149 of the First Schedule to the Act pursuant to orders of the Deputy Commissioner u/s 35 of the KGST Act. The petitioner has relied on the decision of this Court in *West Coast Industrial Gases Ltd. v. State of Kerala* [2007] 10 VST 773 and contended that the assessing officer has no jurisdiction to revise the original assessment on rate of tax which was not subject-matter of the revision by the Deputy Commissioner.

4. However, the Government Pleader contended that the Deputy Commissioner directed revision of assessment pertaining to turnover and when that is done, the balance is an inherent jurisdiction of the officer to apply the actual rate of tax on

the turnover assessed. He further pointed out that the Deputy Commissioner has set aside the assessment in toto and remanded that matter for fresh disposal without any restriction whatsoever on the assessing officer. The counsel for the petitioner submitted that even though in the operative portion of the order of the Deputy Commissioner he does not talk about the revision in assessment called for, the assessment has to be revised based on his findings in the order. The ground for setting aside the assessment u/s 35 by the Deputy Commissioner was the penalty levied on the petitioner u/s 29A(4) which was not noticed by the assessing officer while completing the assessment. The penalty levied u/s 29A(4) is for attempting evasion of tax in respect of transport of goods without being accompanied by documents or with documents which are defective. In any case if an attempt of evasion of tax is noticed then it will be unsafe to accept the books of account of the dealer because a dealer entering the entire transactions in the accounts cannot be said to be involved in the attempt of evasion of tax. Therefore, once penalty is sustained then the turnover returned by the dealer based on books of account will not be the actual turnover assessable under the Act. It is to set right this irregularity the Deputy Commissioner set aside the assessment and remanded the case for revision of assessment. Necessarily as a consequence of the order the officer re-determined the turnover which is done in this case. Once the turnover assessed is modified and refixed by the assessing officer pursuant to a direction contained in the Deputy Commissioner's order then necessarily it is for the officer to bifurcate the turnover for the various items sold by the dealer and to apply the correct rate of tax. Therefore, in fact in the operative portion of the order of the Deputy Commissioner what he has done is to set aside the assessment with direction to the assessing officer to make assessment afresh. In fact no restriction whatsoever is imposed by the Deputy Commissioner with regard to the rate of tax to be applied on various items sold by the petitioner. Considering the open remand made by the Deputy Commissioner, we are of the view that the assessing officer was free to apply the actual rate of tax applicable for the commodity sold by the petitioner. In fact, even if the rate applied in the original assessment was higher than the actual rate it would have been open to the petitioner to get the rate re-assessed in his favour pursuant to the order of remand by the Deputy Commissioner. Therefore we hold that the revision in the rate of tax by the assessing officer in the course of assessment made afresh pursuant to the order of remand u/s 35 is in order. We therefore dismiss the revision filed by the petitioner.