(2001) 02 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No. 3635 of 2001

James — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 5(2)
Constitution of India, 1950 — Article 19(1), 21
CST Act, 1956 — Section 7(1), 7(2)
Kerala General Sales Tax Act, 1963 — Section 13, 14(2), 14(7)
Kerala General Sales Tax Rules, 1963 — Rule 5(13), 7(14)

Citation : (2001) 02 KL CK 0003

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : K.M. Joseph and Saigy Jacob Palatty, for the Appellant; Government Pleader, for the Respondent

Judgement

M. Ramachandran, J.—By Ext. P5 proceedings, under the Kerala General Sales Tax Acts, application filed by the petitioner for registration under the KGST Act and Central Sales Tax stands rejected. The application had been made for registration for carrying out the business of sale of Ayurvedic medicines and soap manufactured by them.

2. It is stated that at the time of verification, the petitioner had stated that he had no other business and no sales tax dues were payable. On scrutiny, it is claimed that the petitioner was formerly a dealer in Ayurvedic Medicines during 1984 to 1986. At the time of inspection, as a preclude for registration, it had been found that there was no proper records maintained, and penalty orders had been imposed, and only a portion of the penalty was realised. The assessed tax also could not be realised, as it had been reported that he was not having any assets.

3. In the light findings, he had ben directed to remit the dues,and a show cause notice was issued as to why the application should not be rejected. In reply, the

petitioner had taken a stand that during the period he had not taken registration, since he did not reach the limits prescribed. But the records disclosed that he had made an application, but a security and been directed to be remitted, he did not comply with the direction, and as a result no certificate was granted, and he had reported stoppage of business from 1.3.1986. the respondent, in view of the above events had disposed of the present application recording:

"In exercise of the powers vested with me under S. 14(7) of the KGST Act, 1963 reject the application filed by Sri. K.P. James, Kalans Products, Nellai under S. 13 of the KGST Act, 1963 and under S. 7(1) and 7(2) of the CST Act, 1956."

4. The petitioner submits that for starting the business he had made extensive preparation, and had arranged loan of over 8.3 lakhs and had finalised tie up with Khadi and Village Industries Commission On receiving the impugned order, he had field a revision before the Deputy Commissioner as Ext. P7 but on legal advice that remedy was by filing a Writ Petition, had after filing the O.P. withdrawn the same.

5. Therefore, the question is whether Ext. P5 is sustainable, and whether the petitioner''s application could be rejected for the reasons stated therein. The Revenue has filed a statement giving in detail, the reasons which weighed with them in passing the order. They had also pointed out that against the previous best judgment assessment, an appeal had been filed before the Appellate Assistant Commissioner, and for want of documents the assessment was confirmed. After Ext. P5, however, the petitioner has filed Ext. P6 second appeal challenging the appellate order and it is presently pending. The attempt is to show that grant of registration to such an individual will not subserve the interests of the Revenue.

6. Chapter IV of the KGST Act deals with registration and permit. Every dealer whose total turnover in any year is not less than Rs. 1 lakh, shall and any other dealer, may get himself registered under the Act as per S. 13. Under S. 13, any person who intends to establish an industrial unit may also get himself registered. If the application is in order, and the particulars furnished are correct, and security if demanded is furnished, an applicant is entitled to get registration certificate. The application has to be disposed of within six weeks of receipt therefor.

7. S. 14(7) refers to a certificate which authorises the authority to cancel, modify or amend the certificate already issued.

8. R. 5(13) of the Kerala Central Sales Tax Rules deals with the process of dealing with application. If the application is not in order, or the particulars are incorrect, or incomplete, under sub-r. (14) power is vested with the authority to refuse registration.

9. A certificate of registration under the Central Sales Tax Act is governed by S. 7 of the Act, and CST (Registration of Turnover) Rules, 1957. If the particulars

given in the prescribed form are correct and complete, a certificate is to be issued. Thus it is seen that general guidelines alone are prescribed, and the decision is left to the discretion of the notified authority.

10. Mr.Joseph, counsel for the petitioner, points out that the second respondent has while issuing the impugned order invoked powers only under S. 14(7) of the KGST Act. On a reading of the order, it appears that the objections as above are correct. In the statement filed it is claimed that the order is passed under S. 14(2) of the Act. That Section had no application at all, since the said provisions intended to deal with a situation where an assessee had already been issued with a certificate, and the proposal was for cancellation of the same. That is not at all the case here. But this technical defect and consequential disposal of the O.P.may not serve any purpose. The officer has been empowered to examine the application and allow to reject an application fro certificate, respectively under R. 7(14) of the Kerala Rules and R.5(2) of the Central Rules. Wrong invocation of statutory provisions by an authority while issuing an order, who but otherwise is authorised and competent to discharge the duties and functions under the statue, may not render the order unenforceable or void. The only question is whether at the time of issuing the order was he competent to pass them under the relevant statue. The powers are plenary in nature, as the second respondent is the competent person to examine the application and pronounce thereon exercising a quasi judicial function. Therefore, notwithstanding the defect pointed out, the matter has to be examined vis-a-vis the complaint of the petitioner, and the justifiability of the decision.

11. The second respondent has pointed out that the matter placed before him at the time of declaration was neither full nor complete. It has now come to be noticed that proceedings had been initiated against the petitioner under the Sales Tax Act, though he was not a registered dealer. But he has come to be treated as an assessee, and against the assessment and the appellate order, a second appeal has come to be filed. There is also reference to the imposition of the penalty. The petitioner submits that when he made the application, in 2000, he was not aware of the proceedings which had been initiated in 1985-86. Of course his appeal was in 1991. He had not pursued his application for registration, as there was requirement made for furnishing security, which according to him was beyond his means. He had stopped his business as well. The circumstances show that Department had also almost dropped the proceedings against him. It was on his fresh application that the past filed have been retrieved, in view of the tip off given by his fresh application that the past files have been retrieved, in view of the tip off given by his erstwhile business colleague, who is not in good terms with him now, as he come out.

12. Though there was no justification of the petitioner to withhold information at the time of filing the application in 2000, it appears to me that on getting an opportunity he has satisfactorily explained his stand. A belated appeal has been filed, and now that he wants to spring back to business life, the arrears payable

could be recovered from him, if law permits. As he is enterprising, and sincerely makes attempt to engage in new activities, after considerable investment a perpetual bar by non-registration of his enterprise cannot be understood as contemplated by the statute. As pointed out by the counsel, such an embargo would violate his fundamental rights envisaged under Art. 19(1)(g) and Art. 21 of the Constitution of India. The alleged lapses dating back to more than a decade, itself, in retrospect can be considered as one directly resulting from some form of harassment at that time. He had made an application for registration, and finding him engaged in a profession, he had been, according to him, scared of his wits.

13. A security was demanded, and it was followed by best judgment assessment, and attachment of his belongings. The formality of certificate is a regulatory step, for safeguarding the interests of the Revenue. While deciding a case which challenged cancellation of registration under S. 14(7) of the Act, a Division Bench had observed that filing of a false return was sufficient reason to cancel the benefit. Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Imperial Trading Company, The words were to receive an interpretation capable of speedy implementation of the provisions of the Act and for safeguarding the interests of the Revenue. But that contingency is not there in the case at hand. By insisting for security, and review at appropriate levels that could be guarded against. The certificate is valid for one year and the performance of the assessee could be watched, treating the period as probationary. The Government Pleader stresses on the conduct of furnishing of incorrect details. But this has been attempted to be examined, and the antecedents of past decade need not stand in the way of a fresh lease of life. Upholding of the objection and Ext.P5 will lead to a position that the attempt to start an enterprise is stubbed out, which may not be in public interest. Taking these facts into consideration, I set aside Ext. P5 and direct that the registration certificate applied fort be granted. Consequential orders may be passed within four weeks from today.

The Original Petition is disposed of with the abvoe directions. No orders are passed as regards costs.

