

(2002) 07 KL CK 0087
In the High Court Of Kerala
Case No : O.P. No. 12613 of 1994

John

APPELLANT

Vs

Additional Sales Tax Officer

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 19(1), 19(2), 45A

Citation : (2002) 07 KL CK 0087

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

Bench : Single Bench

Advocate : B. Vinod Kumar and Dale P. Kurian, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Petitioner is challenging Ext. P4 order whereunder penalty levied u/s 45A of the KGST Act was upheld by the Commissioner of Commercial Taxes (Board of Revenue (Taxes), Thiruvananthapuram), the third respondent herein. In fact the penalty levied by the Assessing Officer u/s 45A of the Act was Rs. 1,99,356/- which was reduced to Rs. 1,00,000/- by the Deputy Commissioner of Commercial Taxes. It is this reduced penalty that is confirmed by the third respondent in second revision is challenged in this O.P.

2. The petitioner was a dealer in Cement and the petitioner suppressed purchase of cement for the value of Rs. 8,30,650/- in his accounts that was confirmed by the Assessing Officer after cross checking of the accounts with the supplier which is a reputed cement company by name M/s. Madras Cements Ltd. There is no serious dispute on the facts and there is no scope for contest on the findings of fact of three authorities below that the petitioner has suppressed purchase value. The pattern of suppression done by the petitioner was to show the actual value in the C Forms but lower value in his accounts. In view of the concurrent findings of fact by the three authorities, there is no necessity for this court to go into the correctness or otherwise of the factual findings.

3. Petitioner has raised a contention that since the escaped turnover attract tax u/s 19(1) of the Act, the Assessing Authority has no jurisdiction to issue separate order of penalty under Ext. P1. According to the petitioner Ext. P1 was issued u/s 45A of the Act. Since it was issued with reference to Section 19(2) of the Act also, the same is beyond the period of limitation is his contention. Learned counsel for the petitioner submitted that separate order u/s 19(2) of the Act is not permissible and the said order is without jurisdiction and in any case the order u/s 19(2) of the Act is barred by limitation. In support of the contention that an order u/s 19(2) of the Act cannot be issued separately, the learned counsel for the petitioner has relied upon the decision reported in *State of Kerala v. Jayan Medical Store* (1980) 45 STC 156. In any case according to the counsel the impugned order is barred by limitation and the same is liable to be set aside.

4. I heard the learned Government Pleader also. He has pointed out that it is evident from Ext. P1 itself that the penalty is levied u/s 45A of the Act and the mere mention of Section 19(2) in the said order does not make the order as the one issued u/s 19(2) of the Act. According to the Government Pleader there is no limitation provided either u/s 45A or u/s 19(2) of the Act. He further contended that this Court in *Jyothi Laboratories v. The Inspecting Asst. Commissioner (HC) and Ors.* (1993) (1) KTR 500 has held that the proceeding u/s 45A is independent and separate proceeding and can be completed even before the completion of regular assessment. He also pointed out that this decision is confirmed by the Supreme Court.

5. In the first place I find the impugned order is one issued u/s 45A of the Act and the petitioner has accepted the same and he has filed revision u/s 45A before the Deputy Commissioner to reduce the penalty, who granted quantum relief. Further the petitioner has filed second revision before the Board of Revenue u/s 45A(5) which resulted in Ext. P4 order, which is now under challenge. If the order is u/s 19(1) and 19(2) of the Act, then the remedy was an appeal u/s 34 of the Act and not a revision. In view of the fact that the Officer mainly relies on Section 45A of the Act in levying penalty and the fact that the petitioner has accepted the order as one issued u/s 45A and filed two revisions against the same, I do not think the petitioner can canvass the proposition that the order is one issued u/s 19(2) of the Act. It is not clear from the facts referred to in the decision relied upon by the petitioner that that was an order passed u/s 45A of the Act. In view of the decision of this Court in *M/s. Jyothi Laboratories* case (stated supra), it is settled position that penal proceedings u/s 45A of the Act is independent and separate proceeding and the same is not dependent on assessment. Obviously independent order can be passed u/s 45A without clubbing the same along with assessment whether original or revised. The latter decision referred to above stands confirmed and there is no decision to the contrary pointed out by either of the parties. Therefore, even though the Officer did not pass any order levying penalty in the course of assessment, in exercise of the powers u/s 19(1), the Officer is still competent to levy penalty u/s 45A and the mere mention of Section 19(2) in the order does not make the order as one

issued u/s 19(2) of the Act independent of Section 45A. Further this Court in Hema V. Kumar v. Addl. Sales Tax Officer (1993 (1) KLT 374) has held that notice u/s 19(1) need not be issued along with a notice u/s 19(2). In that case this Court has upheld the separate order of penalty issued u/s 45A read with Section 19(2) of the Act. In the circumstances I do not find any merit in the contentions of the petitioner and the order is therefore confirmed. The further contention of the petitioner that limitation applies to Section 19(2) proceedings is also not tenable. Neither Section 45A nor Section 19(2) prescribes any limitation. The impugned order is issued soon after the completion of revised assessment and the petitioner has no case that unreasonable delay has occurred. Petitioner canvasses the position of limitation of four years from the expiry of the year to which tax relates u/s 19(1) of the Act which applies only to assessment and payment of tax and not with regard to levy of penalty. The Assessing Authority can levy penalty for the tax evaded by the petitioner which is a matter to be initiated in the course or after assessment. In the absence of any limitation prescribed for levy of penalty u/s 45A of the Act, penalty can be levied within a reasonable time from assessment of escaped turnover. In the circumstances, I feel the order passed u/s 45A read with Section 19(2) is perfectly within the powers of the Officer and is not barred by limitation and I do not find any reason to interfere with the order impugned. The first Revisional Authority has reduced the penalty by almost half even though evasion of tax was proved and therefore there is no scope for further reduction.

Original Petition is therefore dismissed.