(1997) 04 KL CK 0013

In the High Court Of Kerala

Case No : T.R.C. No. 32 of 1997

Jony Soaria	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 29A, 41

Citation : (2003) 133 STC 616

Hon'ble Judges : K.K. Usha, J;G. Sivarajan, J

Bench : Division Bench

Advocate : S.A. Nagendran and Premjith Nagendran, for the Appellant; V.V. Asokan, Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—Assessee is the petitioner. Revenue is the respondent. The matter arises in proceedings u/s 29A of the Kerala General Sales Tax Act, 1963.

2. Petitioner is doing business in rubber in the name and style of St. George Rubber Industries, Arumannoor, Kottayam. He is an assesses on the files of the Sales Tax Officer, II Circle, Kottayam.

3. On August 4, 1994 the petitioner was transporting thirty-five barrels of "Latex adhesives" in lorry No. KL. 5B-1861 under the cover of invoice No. 50 dated August 2, 1994 and the prescribed declaration to M/s. Prakash Paranda, New Delhi. The vehicle was detained and checked by the Inspector, Walayar check-post and it was found that the barrels actually contained centrifuged latex and not latex adhesives. Suspecting evasion of sales tax the Sales Tax Inspector issued notice demanding security of Rs. 47,775 and also advance tax of Rs. 23,888. The quantity of centrifuged latex under transport was 6,825 Kg. valued at Rs. 2,38,875. The Sales Tax Inspector intimated the detention of centrifuged latex to the Rubber Board authorities as "cess" is leviable on the same. The Sales Tax Inspector collected security deposit of Rs. 47,775 and also advance tax of Rs.

23,888. Before the enquiry officer the petitioner submitted that the goods intended to be sold were latex adhesives and not centrifuged latex and that centrifuged latex was loaded in the vehicle by mistake by the workers. The Sales Tax Officer (Enquiry) did not accept the above explanation of the petitioner since the petitioner did not have any such explanation at the time of detention on August 4, 1994 and till August 13, 1994 when the goods were released after getting security deposit and advance tax. The enquiry officer held that the circumstances clearly showed that the petitioner was attempting to transport centrifuged latex under the guise of latex adhesive with clear intention to evade the tax due on centrifuged latex. The enquiry officer also noted that the Deputy Secretary of the Rubber Board, Kottayam had collected a sum of Rs. 23,576 towards cess on rubber on this consignment. It was also noticed that the petitioner''s explanation before the Rubber Board authorities by letter dated August 10, 1994 was that it was due to inadvertence that the material was described as latex adhesives instead of centrifuged latex and also expressed regret over the incident and assured that such mistakes will not occur in future. The inconsistent stand taken by the petitioner before the two authorities according to the enquiry officer, clearly showed the deliberate attempt to evade payment of tax on the consignment of centrifuged latex. He accordingly imposed a penalty of Rs. 47,775 and adjusted the security deposit towards the penalty. This penalty order was confirmed by the Appellate Assistant Commissioner and by the Tribunal. Aggrieved by the order of the Tribunal the petitioner has filed this revision u/s 41 of the Act.

4. Admittedly the goods under transport were centrifuged latex and the invoice and the declaration showed the consignment as latex adhesives. But for the detention and inspection of the goods carried in barrels the goods would have moved outside the State without suffering tax on the consignment. It is also worthwhile to note that the petitioner had no case before the Sales Tax Inspector that centrifuged latex was loaded in the barrels by the workers by mistake at the time of release of the goods on furnishing security and advance tax. Such a contention was taken before the Sales Tax Officer only at the time of enquiry proceedings in the reply dated October 20, 1994. But before that the petitioner had explained to the Rubber Board authorities in his letter dated August 10, 1994 that it was by inadvertence that the material was described as "latex adhesives" and also regretted for the same. The petitioner had a case that this letter was obtained by the Rubber Board authorities under threat of cancellation of registration.

5. The Sales Tax Appellate Tribunal on the above admitted facts and circumstances rejected the contentions of the petitioner and came to the conclusion that the lower authorities had clearly established a case of deliberate attempt to evade tax on the consignment punishable u/s 29A. The Tribunal accordingly held that there is no illegality, irregularity or impropriety in the orders appealed against and confirmed the same. The other contentions raised by the petitioner regarding the liability to tax were also rejected. We are in full

agreement with the findings of the Tribunal.

6. A revision u/s 41 of the Act will lie only on the ground that the Appellate Tribunal has either decided erroneously or failed to decide a question of law. The Tribunal in this case has considered the entire facts and circumstances and have arrived at the finding that the petitioner had deliberately attempted to evade the payment of tax due to the Government and that the enquiry officer has clearly established a case for imposition of penalty u/s 29A of the Act. They are pure findings of fact. These findings arrived at by the Tribunal cannot be said to be illegal, unreasonable or erroneous. It cannot also be said that the Tribunal has failed to decide any question of law, for, no question of law was involved at all.

We see no merit in the tax revision case. It is accordingly dismissed.