
(1978) 06 KL CK 0020
In the High Court Of Kerala
Case No : T.R.C. No. 143 of 1977

Josekutty Lukose

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 22-06-1978

Acts Referred:

General Sales Tax Act — Section 19(2), 46, 47

Citation : (1978) 2 ILR (Ker) 611 : (1978) 42 STC 238

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; M.P. Menon, J

Bench : Division Bench

Advocate : S.A. Nagendran and N.N.D. Pillai, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, C.J.—This tax revision is preferred by the assessee against the order of the Sales Tax Appellate Tribunal, Trivandrum. The assessment year is 1968-69. The order complained of was one u/s 19(2) of the Sales Tax Act, reopening the assessment and imposing a penalty on the assessee. On 6th June, 1970 and 8th July, 1970, the intelligence wing of the sales tax department inspected the place of business of the assessee and recovered some account books and vouchers. On the basis of these, it was calculated that a turnover of Rs. 48,859.70 had been suppressed in the books of account of the assessee. Proceedings were initiated against the assessee who agreed to compound the offence departmentally on payment of Rs. 500 as compounding fee. It was thereafter that the Sales Tax Officer initiated proceedings u/s 19 of the General Sales Tax Act and assessed the escaped turnover u/s 19(1). A notice was further issued to the assessee proposing to impose a penalty of Rs. 2,388.00. On appeal by the assessee the Appellate Assistant Commissioner held that imposing of the penalty was unjustified and set aside the said order. On further appeal by the State, the Sales Tax Appellate Tribunal allowed the appeal, set aside the order of the Appellate Assistant

Commissioner and restored the order of the Sales Tax Officer. The assessee has preferred this revision.

2. The argument advanced on behalf of the assessee was that for the same contravention or irregularity disclosed he cannot be visited with two penalties, viz., of a prosecution which resulted ultimately in the matter being compounded under Sections 46 and 47 of the Act and for the imposition of the penalty u/s 19(2) of the Act. It was argued that the scheme and the purpose of the Act would be against the imposition of these two punishments in respect of the same matter. We think this contention is without force and has no merit in it. We may extract the provisions of Section 19(2) and Sections 46 and 47 of the Act:

19. (2) In making an assessment under Sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under Sub-section (1), a penalty as provided in Section 45A :

Provided that no such penalty shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

46. Penalty for submitting untrue return, etc.-(1) Any person who-

(a) knowingly submits an untrue return or fails to submit a return as required by the provisions of this Act or the Rules made thereunder, or

(b) * * * * (c) fails to keep true and complete accounts, or

(d) dishonestly objects to or fails to comply with the terms of a notice issued to him under Sub-section (1) of Section 25, or

(e) being a person obliged to register himself as a dealer under this Act does not get himself registered, or

(f) wilfully acts in contravention of any of the provisions of this Act or the Rules made thereunder, for the contravention of which no express provision for punishment is made by this Act,

shall, on conviction by a Magistrate not below the rank of a Magistrate of the First Class, be liable to fine which may extend to one thousand rupees.

(2) Any person who-

(a) prevents or obstructs inspection, entry, search or seizure by an officer empowered under this Act, or

(b) prevents or obstructs inspection of any vehicle or vessel or goods transported otherwise or seizure of goods by an officer in-charge of a check post or barrier or any officer empowered under this Act, or

(c) fraudulently evades the payment of tax, fee or other amount due from him

under this Act, or

(d) after purchasing any goods in respect of which he has made a declaration under the proviso to Sub-section (3) of Section 5 fails without reasonable excuse to make use of the goods for the declared purpose, or

(e) carries on business as a dealer without furnishing the security demanded under Sub-section (4) of Section 14, shall, on conviction by a Magistrate not below the rank of a Magistrate of the First Class, be liable to simple imprisonment which may extend to six months or to fine not less than the tax or other amounts due but not exceeding two thousand rupees, or to both.

47. Composition of offences.-(1) The assessing authority or other officer or authority authorised by the Government in this behalf may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence,-

(a) where the offence consists of the evasion of any tax recoverable under this Act, in addition to the tax so recoverable, a sum of money not exceeding one thousand rupees or double the amount of the tax recoverable, whichever is greater and

(b) in other cases, a sum of money not exceeding one thousand rupees.

A comparison of the sections is enough to show that the state of affairs contemplated by Sections 46 and 47 is different from what is envisaged by Section 19(2). Section 46 contemplates criminal prosecution under certain contingencies listed in clauses (a) to (f) of the section and conviction by a Magistrate after the requirements of a conviction for a criminal offence have been satisfied. It is for the composition of such an offence committed or reasonably suspected to have been committed that the machinery of composition is provided for u/s 47 of the Act. On the other hand, Section 19(2) merely describes the satisfaction of an executive authority, viz., taxing authority, that on account of the wilful non-disclosure of assessable turnover by the dealer there has been an escapement of turnover from assessment. We are definitely of the opinion that action under one section cannot have any bearing to bar action under the other. The difference between the two concepts of a criminal prosecution and the imposition of a penalty has been pointed out in at least two decisions, viz., of the Andhra High Court in *M. Seetharamaswami and Co. Vs. Commercial Tax Officer, Elluru*, and, following the same, by the Gujarat High Court in *Natwarlal Mohanlal Kharadi Vs. State of Gujarat*, . In the latter of these decisions, the court observed:

...The proceeding resulting in the imposition of penalty u/s 16, however, could not possibly be said to be a proceeding of a criminal nature. We find that this view which we are taking has also found favour with a single Judge of the Andhra Pradesh High Court in *M. Seetharamaswami and Co. Vs. Commercial Tax Officer, Elluru*, . If, therefore, it could not be said that there was prosecution of a dealer

when penalty was sought to be imposed on him u/s 16, the entire foundation of the contention of Mr. Padia must disappear and the applicability of Article 20(2) must be rejected. We are, therefore, of the view that Rule 51 in so far as it made it penal for any person to contravene the provisions of Rule 10 was not violative of Article 20(2) and the challenge levelled against its validity must fail.

3. In the light of the above principle, with which we are in agreement, we cannot accept the contention of the counsel for the assessee that as a result of the order of composition u/s 47 of the Act, the imposition of a penalty u/s 19(2) would be barred. We dismiss this tax revision, in the circumstances, without any order as to costs.