(2003) 03 KL CK 0131

In the High Court Of Kerala

Case No : O.P. No''s. 5080 and 7047 of 2003 (D)

Keiniku APPELLANT

Vs

Sales Tax Inspector and Others RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 30B, 30B(2), 30B(4)
Kerala General Sales Tax Rules, 1963 — Rule 35B
Pondicherry General Sales Tax Act, 1967 — Section 29, 29(2), 29A(2)

Citation : (2006) 143 STC 353

Hon'ble Judges : P.R. Raman, J

Bench : Single Bench

Advocate : S.K. Devi, for the Appellant; S. Soman, Special Government Pleader (Taxes), for the Respondent

Judgement

P.R. Raman, J.—A common question is raised in these two original petitions. Hence, these original petitions are disposed of by common judgment. The facts relating to O.P. No. 5080 of 2003 are stated thus :

2. The petitioner is doing business in chicken and fish at the Municipal Market, Mahe and having registration certificate issued under the Pondichery General Sales Tax Act, 1967 as well as under the Central Sales Tax, 1956 Act by the Commercial Taxes Officer, Mahe, Exhibits P1 and P2 are the certificates produced for evidence thereof. The petitioner is purchasing live chicken from Tamil Nadu for the business transaction and facing huge difficulties as the check-post authorities are either failed to issued transit pass as provided u/s 30B of the Kerala General Sales Tax Act, 1963 read with Rule 35B of the Kerala General Sales Tax Rules, 1963 he has approached this Court (sic).

3. The petitioner submits that business is started recently with an expectation of high turnover for which the petitioner had acquired two stalls at the Municipal Market at Mahe. To have large-scale business it is necessary to sell chicken for a moderate price for which it is necessary to depend the hatcheries at Tamil Nadu

and the goods are to be transported through the State of Kerala. Originally there was no difficulty in getting the transit pass from the officer-in-charge of the first check-post entry. He has produced exhibit P3 original and duplicate transit pass as obtained from the Officer-in-charge of the first check-post before he exits. But on December 6, 2003 when a consignment transported through Truck No. KL 9C 2598, the same was detained by the first respondent and issued notice u/s 29A(2). Exhibit P4 is a true copy of the said notice. The petitioner was directed to pay an amount of Rs. 6,040 as entry tax and Rs. 13,892 as security deposit. The reasons stated in exhibit P4 is as follows :

The goods is transported to Mahe from Coimbatore (Pondichery). Mahe is a small union Territory with an area of below 7 square kilometer. Today two loads of live chicken is also transported to the same place. Hence the consumption of the heavy quantity of live chicken in the State is suspicious. Also suspected that the goods transported to Mahe is also using for selling around Mahe in Kerala State. In the circumstances of permitted to transport two loads of live chicken to Mahe, the load under transport is suspected (sic). Hence, bona fides of transport, genuineness of the document and thereby attempt at evasion of tax is suspected and the value of the goods is estimated Rs. 75,500 including freight.

4. According to the petitioner, since he was forced to pay the amount as otherwise by keeping the vehicle there, the entire chicken would die causing great loss. Exhibit P5 is the receipt for payment of the amount. The petitioner pointed out the difficulties to the third respondent and requested to give necessary instructions to the check-post authorities. Exhibit P6 is a copy of letter addressed to the Inspecting Assistant Commissioner, Chittoor, Palakkad wherein the petitioner has requested to give necessary direction to the Gopalapuram check-post authority to issue the transit pass to their vehicles without delay and to refund the amount paid on February 6, 2003. But nothing is done in the matter. The petitioner prays for a direction to the respondents to issue transit pass to him on entry of the goods without any undue delay, to refund the amount paid by him as per exhibit P5 and to declare that the first respondent acted beyond his authority by issuing exhibit P4.

5. The petitioner in O.P. No. 7047 of 2003 is also similarly situated person. He has prayed for quash exhibits P9 and P10 notices produced in this case by which the goods were detained and also for appropriate direction to issue transit pass as provided u/s 30B.

6. Admittedly no tax will be leviable merely because the goods enters the State en route to another State in transit. Unless the seller purchases the goods within the State there is no liability to pay sales tax. However, in order to ensure that goods entering the State en route to another State in transit are not sold within the State evading tax liability provisions have been made to safeguard the interest of the Revenue. As per Section 30B, when a vehicle or vessel carrying goods from outside the State and bound for any place outside the State passes through the State, the owner or driver or person-in-charge of such vehicle or

vessel shall obtain a transit pass in the prescribed form for such goods from the officer-in-charge of the first check-post after his entry into the State and deliver it to the officer-in-charge of the last check-post before his exit from the State and on failure to deliver the transit pass for such goods referred to in Sub-section (1) to the last check-post, it would be presumed that such goods which are liable to tax under this Act have been delivered within the State for sale. As per proviso to Sub-section (2) of Section 30B, if the goods carried by such vehicle or vessel, after entering the State, are transported outside the State by any other vehicle or conveyance, the onus of proving that goods have actually moved out of the State, shall be on the owner or driver or person-in-charge of the vehicle or the vessel, as the case may be and where it is presumed under Sub-section (2) that the goods carried in a vehicle or vessel have been delivered within the State for sale by the owner or driver or person-in-charge of the vehicle or vessel, such person shall be jointly or severally liable to pay tax which shall be assessed and recovered in accordance with the relevant provisions of the Act. As per Sub-section (4), where any person consigns any goods or transports any goods from another State into the State and where the particulars furnished in the declaration prescribed in Clause (b) of Sub-section (2) of Section 29 are false or the consignee or purchaser stated therein is found to be bogus or non-existent or is not traceable or denies such purchase, it shall, unless it is proved otherwise that the particulars furnished in the declaration are true, it will be presumed that such goods which are liable to tax under this Act have been sold in the State by the consignor or the owner as the case may be. On a reading of the above provision, it can be seen that only when the goods actually sold or presumed to have been sold, the event of tax liability arises. It is true that in a case where the owner or driver fails to deliver the transit pass in the last check-post it will be presumed that the goods have been sold within the State. Likewise, if the declaration prescribed in Clause (b) of Sub-section (2) of Section 29 is found to be false or bogus then also a presumption will arise that the goods have been sold within the State. It can be seen from exhibit P4 notice that none of the circumstances has arisen in the present case. On the other hand, the petitioner was not given a transit pass in spite of his request and he has expressed his difficulties in the matter when a presumption of tax liability arose and for non-production of the delivery pass at the last check-post. It is also mandatory that such passes are issued at the first check-post so that the consignees who pass through the State en route are not made liable to pay any tax as it is beyond the scope of the State Legislature to impose tax on goods, merely because it passes en route to another State. Therefore, unless in a cases where the presumption arises under Sub-section (2) of Section 30B or Sub-section (4) of Section 30B or in a case where after entering the State the goods are transported through another vehicle without satisfactory proof that the goods have actually moved out of the State, the authorities can impose tax. Exhibit P4 clearly shows that it was on a mere suspicion that tax is imposed on the petitioner. Exhibit P4 stated that hence the consumption of the heavy quantity of live chicken in the State is suspicious. Also suspected that the goods, transported to Mahe is also used for selling around Mahe in Kerala State. A mere suspicion without any foundation cannot be a ground for imposing a tax which otherwise not liable to be paid. When a consignee is entitled to get a transit pass at the first check-post so as to produce the same at the last check-post before entering the State and failure to produce the same at the exit check-post which will attract tax, the grievance expressed by the petitioner is genuine. In this connection Rule 35B of the Kerala General Sales Tax Rules provides that every transit pass issued u/s 30B shall be in form 27 "C". Therefore, whenever a consignee enters the State en route to another State he is entitled to be issued a transit pass as contemplated under Rule 35B, refusal to give such a pass as entailed on him and imposing tax on some suspicion without complying with the provisions is certainly illegal.

7. In the circumstances, I declare that as contemplated u/s 30B of the Kerala General Sales Tax Act, 1963 when a vehicle or vessel carrying goods from any place outside the State and bound for any place outside the State passes through the State, the owner or driver or person-in-charge of such vehicle is entitled to obtain transit pass in the prescribed form for such goods from the officer-in-charge of the first check-post after his entry into the State and such pass shall be issued so as to enable the owner or driver or person-in-charge of such vehicle to deliver the same to the officer-in-charge of the last check-post. Refusal to give such transit pass at the same time imposing tax liability merely on suspicion as is now raised in exhibit P4 is unwarranted.

8. Therefore, I direct respondents Nos. 2 and 3 to give necessary instruction to all sales tax check-post to comply with Section 30B and issue transit pass, so as to enable the owner, driver or person-in-charge of the vehicle passing through the State to another to produce the same before the last check-post.

9. Though statement is filed in this case on behalf of the first respondent which only reiterates exhibit P4, the authority shall also consider the request for refund of the amount already paid and dispose of the same in accordance with law.

A copy of this judgment be issued to the respondents for compliance.

Original petitions are disposed of as above.

