
(2009) 11 KL CK 0138

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28878 of 2009 (D)

K.M. Moosa

APPELLANT

Vs

Inspecting Assistant Commissioner and Another

RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17(3), 23B, 23B(4)

Citation : (2010) 30 VST 228

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : P.N. Damodaran Namboodiri, for the Appellant; C.K. Govindan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Abdul Rehim, J.—Assessments for the years 1998-99 and 1999-2000 with respect to the petitioner, u/s 17(3) of the Kerala General Sales Tax Act, 1963 ("the KGST Act") were completed by the authority concerned. The petitioner made an unsuccessful challenge against the assessment, in appeal. The appeal was dismissed as early as on January 27, 2008. Subsequently in view of the amendments brought to the KGST Act introducing Section 23B, the petitioner filed applications before the second respondent for settlement of arrears. The second respondent passed orders on the application as evidenced by exhibits P5 and P5(a). The outstanding arrears with respect to both the years were permitted to be settled, after giving considerable reductions and the amount payable with respect to the year 1998-99 was settled at Rs. 3,29,551 (rupees three lakhs twenty nine thousand five hundred and fifty one only) and the amount payable for the year 1999-2000 was settled to Rs. 2,15,613 (rupees two lakhs fifteen thousand six hundred and thirteen only). In exhibits P5 and P5(a) orders the respondents had instructed the petitioner to pay the said amounts immediately.

2. The contention of the petitioner is that as per the provisions in Section 23B(4),

on receipt of the application the assessing authority is bound to work out the actual tax and other amount due from the dealer in the scheme, and to intimate the amount to the dealer. Thereupon the dealer shall remit 25 per cent of the amount within 15 days of receipt of such intimation/notice and balance amount shall be paid in three equal monthly instalments, starting from the subsequent month onwards. It is complied that the orders issued in exhibits P5 and P5(a) has not stipulated the time-limit within which the remittances need be made, nor it has specifically provided any instalment facility.

3. According to the petitioner he had approached the second respondent on several occasions and explained about the provisions contained in Section 23B as well the circular issued by the Commissioner of Commercial Taxes formulating the procedure to be followed with respect to the issuance of orders on such settlement was brought to the notice. But it is alleged that the second respondent has not taken any action to correct the orders.

4. It is evident from exhibit P6 that consequent to failure on the part of the petitioner to make payment of the amounts stipulated under exhibit P5 and P5(a), recovery steps were initiated for realising the entire tax amount. According to the petitioner he is ready and willing to remit the amount covered under exhibits P5 and P5(a). Therefore the petitioner is challenging the recovery steps and seeking directions for permitting remittance of amounts under the amnesty settlements, in instalments.

5. In the counter-affidavit filed on behalf of respondents it is stated that after receiving exhibits P5 and P5(a) intimations on December 5, 2008, the petitioner had never approached the respondents for any purpose. It is alleged that the petitioner kept silence about the orders for nearly 10 months. And knowing very well that as per the scheme u/s 23B, the petitioner is bound to remit 25 per cent of the amount settled, within a period of 15 days, the petitioner failed to make payment of any such amount. Further it is stated that the petitioner had also failed to make payment of any amount within the period of four months as provided u/s 23B. The respondents had pointed out a decision of the honourable Supreme Court of India in *Bharti Telecom Ltd. Vs. The Commissioner of Customs*, . While considering similar notifications the honourable apex court observed that, the provisions of such notifications has to be interpreted strictly in the manner stated in the notifications, and on no other basis. It is further stated that in taxing statutes there is no room for any intendment and regard must be had to the clear meaning of the words and that the matter should be governed only by the language of the notifications, i.e., by the plain terms of the exemption.

6. In the case at hand it is evident that exhibits P5 and P5(a) orders were issued to the petitioner as early as in December, 2008. The petitioner had submitted application for availing of the benefit of the scheme, in the form prescribed, knowing very well about the provisions contained in Section 23B. It is evident from Section 23B(4) that the provisions mandate the dealer to remit 25 per cent

of the amount within 15 days on receipt of the intimation, and the balance amount in three equal instalments starting from the subsequent months. The allegation is that the orders exhibits P5 and P5(a) contained an instruction to the effect of requesting the petitioner to make payment of the amount immediately. This will not in any manner take away the benefits available to the petitioner under the provisions of Section 23B(4). If there was requirement of any clarification obtained with respect to exhibits P5 and P5(a) orders, the petitioner could have approached the authority concerned, with a written request, after effecting payment of 25 per cent within a period of 15 days. Apart from the mere allegation raised in the writ petition, that the petitioner had approached the authority on several occasions, nothing is produced to substantiate such a contention. No representation in this regard was seen submitted before the authority. Having failed in remitting the initial amount of 25 per cent or the subsequent monthly instalments, the request of the petitioner for remitting payment of the settled amount could not be accepted, at this belated stage. It is evident that inspite of receipt of the order in December 2008, the petitioner had raised objection against the wording in those orders, only by filing this writ petition during October, 2009.

7. A further contention is raised by the petitioner that no specific order was issued by the authority concerned cancelling the benefit of the settlement issued under exhibits P5 and P5(a). But it is evident that the petitioner had never acted upon in accordance with the settlement and the settlement so permitted has never come into effect. Therefore the recovery steps now initiated cannot be assailed on the ground that no specific order cancelling the settlement is issued.

8. In the above circumstances, the writ petition is devoid of any merit and the same is dismissed.