

(1957) 01 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 245 of 1956-E

K.V. Joseph

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision : 04-01-1957

Acts Referred:

Travancore-Cochin General Sales Tax Act, 1125 — Section 12(2)(b)

Citation : (1957) 1 KLJ 191 : (1957) 8 STC 336

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : K.S. Sebastian, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The managing partner of the St. Michael's Oil Mills, Alleppey, has filed this petition for and on behalf of the partnership. The 1st respondent is the Sales Tax Officer, 2nd Circle, Alleppey, the 2nd respondent, the Appellate Assistant Commissioner of Agricultural-income tax and Sales Tax, Trivandrum, the 3rd respondent, the Board of Revenue, Trivandrum, represented by its Secretary, the 4th respondent, the State of Travancore-Cochin represented by the Chief Secretary to Government, Trivandrum, and the 5th respondent, the Tahsildar of Ambala-puzha Taluk.

2. The prayers in the petition are that this Court should :

(1) issue a writ of certiorari or such other directions to the respondents in order to call up the records and proceedings of (1) the 1st respondent's order dated 22nd February, 1954 (Exhibit A), (2) the 2nd respondent's order dated 22nd February, 1954 in Sales Tax Appeal No. 849/52-53 (Exhibit C), (3) the 3rd respondent's order C. Dis. No. 2960/54 dated 17th July, 1954, in Sales Tax Revision Case No. 93/54 (Exhibit E) and (4) the 4th respondent's order No. L. Dis. I4842/56/Fin. dated 23rd May, 1956, to scrutinise them and quash the said

orders.

(2) to issue a writ of prohibition, mandamus or such other directions to respondents 1 and 5 so as to prevent them from taking any coercive steps against the petitioner for realisation of the tax demanded on the basis of Exhibit A, assessment order of the 1st respondent;

(3) to restrain the 5th respondent by an injunction from taking any coercive steps under the Revenue Recovery Act against the petitioner for realisation of the tax until the disposal of this original petition;

(4) to grant such other reliefs as may be deemed fit and proper in the circumstances of the case.

3. Exhibit A reads as follows:-

ORDER

The assessee is conducting an oil mill. The business was started on 8th December, 1951. Though he has not applied for payment of tax under rule 17, he has filed monthly returns for 1951-52, and has discontinued to file returns in 1952-53. Accounts were called for and inspected. They are found to be more or less properly maintained and the purchases and sales are generally supported by vouchers. The claim for deduction under Rule 20 (2) is disallowed as he has not got a registration under Rule 20 (1). The gross turnover reported in the returns is accepted and the assessment is finalised as under and the assessee is ordered to remit the amounts due as per notice.

Turnover from December 8, 1951 to March,

Issue notice and chalan.

3. Section 12(2)(b) of the Travancore-Cochin General Sales Tax Act, 1125, under which the assessment was made is in the following terms :

If no return is submitted by the dealer under Sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete the assessing authority shall assess the dealer to the best of his judgment:

Provided that before taking action under this clause, the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

The petitioner was not specifically called upon to prove the correctness and completeness of the returns made and one of the three contentions of the counsel for the petitioner is that the assessment is bad for lack of compliance with the terms of the proviso. I am prepared to assume that there has been no compliance with the proviso in this case. Even on that assumption, however, no writ can issue as no damage whatsoever has occurred to the petitioner. The total turnover returned was accepted by the officer and no variation was made in the

figure.

4. The second contention is that the officer was wrong in not allowing a deduction under Rule 20 (2) of the Travancore-Cochin General Sales Tax Rules, 1950.

6. Rule 20 (1) of the Travancore-Cochin General Sales Tax Rules, 1950, provides :

Any dealer who manufactures cocoanut/groundnut oil and cake from cocoanut and/or copra or groundnut and/or kernel purchased by him may on application to the assessing authority having jurisdiction over the area in which he carries on his business, be registered as a manufacturer of cocoanut/groundnut oil and cake and a certificate issued in Form VI", and Rule 20 (2) (omitting the Explanation):

Every such manufacturer shall be entitled to a deduction under clause (k) of Sub-rule (1) of Rule 7 equal to the value of the cocoanut and/or copra or groundnut and/or kernel purchased and converted by him into oil and cake provided that the amount for which the oil is sold is included in his turnover.

6. In T.P. Variath v. Board of Revenue and Anr. [1956] 7 S.T.C. 12 this Court held:

Rule 22 (2) seems to make it quite clear that in order to be entitled to the deduction the manufacturer must have been a "registered manufacturer" at the time of the manufacture and not at any time thereafter. The person entitled to a deduction under that sub-rule is "every such manufacturer", i.e., "every manufacturer registered in pursuance of Sub-rule (1) of rule 22" and the deduction is in respect of oil and cake "converted by him", i.e., "converted by a registered manufacturer." In view of this it is impossible to say that any oil manufactured by a dealer who was unregistered at the time of the manufacture is none the less oil manufactured by a registered dealer simply because the dealer chose to obtain a certificate of registration subsequent to the completion of the manufacture.

7. The petitioner was not a registered manufacturer at the time of the manufacture or at any time during the accounting period, 1951-52. The application for registration was filed only on 14th February, 1953, and the registration was on 15th February, 1953.

8. Apart from The State of Madras, In re [1954] 5 S.T.C. 161 Mad (which was discussed in T.P. Variath v. The Board of Revenue and Anr. [1956] 7 S.T.C. 12 , Deputy Commissioner of Commercial Taxes v. Lakshmana Swami [1956] 7 S.T.C. 560 and Sitarama Rice and Oil Mills v. State of Andhra [1956] 7 S.T.C. 635. were also cited before me but in view of what is stated above it is unnecessary to deal with those decisions and they are not discussed in this judgment.

9. The third and last argument was based on the fact that the returns submitted by the petitioner were monthly returns. According to the learned counsel for the petitioner the monthly returns postulated a monthly assessment and not an

annual assessment as has been made by Exhibit A in view of rule 17 of the Travancore-Cochin General Sales Tax Rules, 1950. Rule 14 (1) of the Travancore-Cochin General Sales Tax Rules, 1950, provides :

Every dealer liable to submit a return under Rule 9, except those who have elected to be assessed by the method described in Rule 17, shall, on or before the first day of May in every year submit to the assessing authority of the area in which his principal place of business is situated a return in Form I showing the actual gross and net turnover for the preceding year and the amounts by way of tax or taxes actually collected during the year",

and Rule 17 (1):

In lieu of the method of assessment described in Rules 10 to 15 the method described in Sub-rules (2) to (5) may, at the option of the dealer, be adopted at any time in the case of dealers whose net turnover exceeds Rs. 20,000. If the dealer desires that this method of assessment should be applied to him from the beginning of any year, he shall intimate his desire to the assessing authority at the time of submitting the return prescribed in Rule 9 or thereafter before the 1st May in any year. If, however, he exercises the option after the commencement of any year he shall along with the intimation of his exercise of such option submit to the assessing authority a return in Form I-B showing the gross and net turnover for the period commencing from the beginning of that year up to the end of the month immediately preceding and the tax or taxes actually collected during that period, and shall therewith forward a chalan receipt from a Government treasury or a cheque in favour of the assessing authority for the full amount of tax or taxes payable by him for such period after deducting therefrom any tax or taxes which he might have paid in that year under rule 13.

10. The petitioner's net turnover exceeded Rs. 20,000 and the firm could have adopted the method of assessment prescribed in Sub-rules (2) to (5) in lieu of the method described in Rules 10 to 15 provided the firm had complied with the provisions of Sub-rule (1) of Rule 17. The firm had not done so and in view of that the mere fact that the firm, had filed some monthly returns-the return in respect of December, 1951, on 4th February, 1952, in respect of January, 1952, on 7th March, 1952, in respect of February, 1952, on 8th April, 1952, and in respect of March, 1952, on 14th May, 1952-should be considered as not sufficient to enable the firm to be assessed according to the method described in Sub-rules (2) to (5) of Rule 17.

11. Such being my conclusions on the three contentions raised before me, this petition should be dismissed and is hereby dismissed though in the circumstances of the case without any order as to costs.