(1999) 01 KL CK 0056

In the High Court Of Kerala

Case No : O.P. No. 12368 of 1995-V

L.S. Prasad APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 05-01-1999

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 45A

Citation : (2003) 133 STC 582

Hon'ble Judges : G. Sivarajan, J

Bench : Single Bench

Advocate : N.N. Divakaran Pillai, for the Appellant; M.R. Sabu, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

G. Sivarajan, J.—The petitioner is a registered dealer under the Kerala General Sales Tax Act, 1963 and an asscssee on the files of the first respondent. He was dealing in cement and cattle-feed. There was an inspection of the business premises of the petitioner by the second respondent on September 22, 1992 and certain documents have been seized. Based on the materials gathered in such inspection, the second respondent initiated proceedings against the petitioner fur imposition of penalty u/s 45A of the Act. Exhibit P1 is the notice asking the petitioner to compound the offence. Since the petitioner did not agree for compounding, proceedings u/s 45A were initiated by issuing exhibit P5 notice. The petitioner requested for permission to take extracts from the seized records which, though permitted, was not issued. Still the petitioner filed exhibit P7 objection. Rejecting the said objections the second respondent issued exhibit P8 penalty order by which a penalty of Rs. 29,834, being double the amount of tax sought to be evaded, was imposed u/s 45A. The said penalty order was confirmed by the two revisional authorities by exhibits P9 and P10 orders. The petitioner challenges these orders in this original petition. I have heard the learned Government Pleader appearing for the respondents also.

2. As already stated, the imposition of penalty was based on the materials gathered in the inspection conducted on September 22, 1992. It is alleged that the petitioner had effected unaccounted purchase and sale of cement to the tune of 1000 bags. The explanation of the petitioner that the said sales were effected through a commission agent by name Ncsayyan, was rejected and the penalty of Rs. 29,834 was imposed. This, as already stated, is double the amount of tax sought to be evaded. Learned counsel appearing for the petitioner canvassed the findings of the authorities regarding unaccounted purchase and sale of cement. I do not propose to interfere with the said finding since all the three authorities have concurrently found that the petitioner had effected unaccounted purchase and sale of cement. Apart from that, it cannot be said that the said finding is without any material at all. However, I find merit in the submission of the learned counsel appearing for the petitioner that the authorities were not justified in imposing and sustaining the maximum penalty in the instant case. u/s 45A of the Act, penalty can be imposed for any of the offences mentioned therein only if the department is able to establish that there had been wilful or contumacious conduct on the part of the dealer. Apart from that, the circumstances also must show that there was an attempt on the part of the dealer to evade the tax legitimately due to the Government or attempted to make such evasion. In the instant case, apart from the fact that the authorities have found that certain transactions have not been accounted, no finding was entered either with regard to evasion of tax or with regard to the contumacious conduct. It is not the law that in all cases where there are technical defaults penalty should be imposed (See Hindustan Steel Ltd. Vs. State of Orissa, . Further this Court in P.D. Sudhi v. Intelligence Officer, Agricultural Income Tax and Sales Tax [1992] 85 STC 337 has laid down the guidelines for imposition of penalty and the quantum thereof In the instant case, as already stated, none of the authorities have dealt with the issue regarding the contumacious conduct or regarding the quantum of penalty. The maximum penalty has been imposed in a mechanical way. In these circumstances, since I have upheld the finding of the authorities that the petitioner has not accounted for the sale of 1000 bags of cement, I sustain the penalty which is equal to the tax sought to be evaded. I accordingly modify exhibit P8 penalty order restricting the penalty to Rs. 14,917. The orders of the authorities are sustained to the extent mentioned above.

3. The learned counsel appearing for the petitioner then submitted that the records seized in the inspection conducted on September 22, 1992 are oven now with the second respondent and that the same has not been returned in spite of several requests made therefor. He further submitted that the assessment for the said year is even now pending and that the petitioner is disabled from producing the same before the assessing authority. In the circumstances, there will be a direction to the second respondent to return the said documents, if it is no longer required for prosecution, or, at any rate, to issue photo copy of the said documents at the petitioner''s expenses.

The original petition is allowed to the above extent.

Order on C.M.P, Nos. 22068 and 22095 of 1995 in O.P. No. 12368 of 1995-V dismissed.

