(2004) 10 KL CK 0001

In the High Court Of Kerala

Case No : T.R.C. No''s. 92 and 177 of 2002

M/s. Autocast Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 28-10-2004

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17, 19, 19B, 34

Citation : (2005) 2 KLJ 291

Hon'ble Judges : S. Sankarasubban, J;Pius C. Kuriakose, J

Bench : Division Bench

Advocate : K.B. Muhamed Kutty, for the Appellant; Raju Joseph (GP) and Georgekutty Mathew (GP), for the Respondent

Final Decision : Dismissed

Judgement

Sankarasubban, J.—These Two T.R.Cs. are filed against the order passed by the Sales Tax Appellate Tribunal, Additional Bench, Kottayam in T.A. Nos. 482 and 484 of 1997. Assessee is the appellant. Assessment years are 1990-91 and 1991-92. According to the assessee, the assessee has been declared as a sick industry. Government of Kerala by its order, G.O. No. 210/95/ID dated 28-12-1995 declared the Company as a sick unit. In the order, there is a moratorium on payment of sales tax. According to the assessee, as per the Government order, the assessee need pay tax from 1-4-2001 in 60 instalments without interest. Against the assessment order, the assessee filed appeals. But that was without complying with the procedure u/s 34 of the Kerala General Sales Tax Act (for short ''the Act''). As per that Section, the assessee has to deposit the admitted tax along with the appeal. This was not done. Appeals filed by the Tribunal was also dismissed stating that the order passed by the Appellate Authority is correct. It is against that the present revisions are filed.

2. It is true that the petitioner has been declared as a sick unit by the Government of Kerala and that arrears of sales tax need be paid only in instalments. But the question for consideration is whether the assessee will be

exempted from paying the admitted tax as per Section 34 of the Act. The third proviso to Section 34 of the Act states as follows: "Provided also that in the case of an order under sub-section (2) or sub-section (3) or sub-section (4) or sub-section (4A) of Section 17 or sub-section (1) or sub-section (2) of Section 19, or Section 19B no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax or other amounts admitted by the appellant to be due or of such instalment thereof as might have become payable, as the case may be". There is no dispute that the assessee has admitted certain tax. But since it was declared as a sick unit and time was given to the petitioner to pay arrears of tax, the question is whether the assessee can file appeals without complying with the above Proviso. According to us, the contention of the petitioner cannot be accepted. The order gives some time to the petitioner for payment of the arrears of tax. That will not give right to the petitioner to file an appeal under the Kerala General Sales Tax Act without remitting the admitted arrears of tax. The provisions in the Statutes cannot be ignored in the light of the executive order passed by the Government. Hence, we are of the view that the Authorities below were correct in dismissing the appeal as the admitted tax was not paid.

T.R.Cs. are dismissed.

