(2014) 03 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No. 12637 of 2003 (D)

M/s. National Organic Chemical Industries Ltd. APPELLANT

Vs

The Assistant Commissioner of Commercial Taxes (Asst.) IV, Department of Commercial Taxes RESPONDENT

Date of Decision : 17-03-2014

Acts Referred:
Constitution of India, 1950 — Article 226
Kerala General Sales Tax Act, 1963 — Section 19

Citation : (2014) 03 KL CK 0001

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Joseph Markose and Sri. Thomas Vellappally, for the Appellant; S. Sudheesh Kumar, Government Pleader, for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The challenge in the original petition is against Ext. P15 order passed by the respondent in proceedings initiated u/s 19 of the Kerala General Sales Tax Act. The assessment year in question is 1987-1988 and the assessment was initially completed vide Ext. P1 order. Thereafter, vide Ext. P2 notice issued u/s 19 of the Kerala General Sales Tax Act, it was proposed to re-assess the petitioner on a total turnover of Rs. 1,10,03,565/- and taxable turnover of Rs. 30,32,540/-. This was done pursuant to an observation that on a verification of accounts of two purchasers namely M/s. Bharat Rubbers, Kalamassery and M/s. Cochin Rubbers, Kalamassery, it was noticed that there were certain purchases recorded in their books of accounts which did not reflect in the sales recorded by the assessee in its books of account. Although the petitioner furnished a detailed reply to the said notice vide Ext. P3, vide Ext. P4 order, the respondent confirmed the proposal in Ext. P2 notice. It would appear that the petitioner carried the matter in appeal before the appellate authority under the Kerala General Sales Tax Act, who set aside Ext. P4 order after finding that there was non-compliance with the requirements of natural justice. He then remanded the matter to the respondent for fresh consideration. The respondent thereafter issued a fresh notice which is produced Ext. P6 in the original petition. Pursuant to a reply furnished by the petitioner to that notice Ext. P8 assessment order was passed whereby the respondent once again confirmed the findings in Ext. P4 order initially passed by him. This led the petitioner to, once again, prefer an appeal before the appellate authority who, yet again, vide Ext. P10 order, remanded the matter to the assessing authority for fresh consideration of the matter after verifying the books of accounts of the purchasers and furnishing copies of the Purchase Invoices, if the same were available, to the petitioner, before proceeding to pass orders in the matter.

2. Pursuant to Ext. P10 order of the appellate authority, the petitioner approached the respondent with a request for furnishing copies of the invoices which were relied upon by the respondent for rejecting the books of accounts of the petitioner. It would appear that the respondent was not able to furnish copies of these invoices to the petitioner and hence after issuing Ext. P13 notice, and considering the reply furnished by the petitioner, he proceeded to pass Ext. P15 order confirming the proposals in the original notice to the extent of making an addition of Rs. 4,88,544/- to the turnover reported by the petitioner and levying tax on the differential turnover. In Ext. P15 order, it is noticed that the respondent assessing authority accepted the plea of the petitioner with regard to three of the invoices that were originally objected to in the notice issued to the petitioner. The addition was therefore confirmed based on the remaining two invoices, copies of both of which could not be furnished to the petitioner despite it making a specific request for the same.

3. I have heard Sri. Joseph Markose, Senior counsel appearing for the petitioner and the learned Government Pleader appearing on behalf of the respondent.

4. At the very outset, it must be noticed that this is the third round of litigation in respect of the KGST assessment of the petitioner for the year 1987-88. While in the first two rounds the revised orders of assessment passed by the respondent were set aside by the appellate authority and the matter remanded to the respondent for conducting a de novo adjudication after giving the assessee an opportunity of commenting upon the entries in the purchaser''s books of accounts with regard to sales that were alleged to have taken place, the respondent was not able to comply with the said direction of the appellate authority. No doubt, this was on account of the fact that the purchasers in question were not able to furnish copies of the purchase invoices on the strength of which they allegedly made the purchases and the corresponding entries in their Purchase Register. At this belated stage of the proceedings, it is apparent that such evidence cannot now be produced by the respondent for the purposes of the assessment proceedings. The respondent also admits that it has not been able to get the said documents despite its best efforts to get the same pursuant to the directions of the appellate authority.

5. It is settled law that in tax matters the levy of tax must be on the happening of a taxable event. The burden of proof to show that the taxable event has arisen

is on the department that seeks to levy the tax. In the instant case, the assessment originally completed against the petitioner was sought to be reopened by the respondent on the allegation that certain sales effected by the petitioner had not been reflected in its accounts and consequently had escaped payment of tax. It was incumbent upon the department to prove the occurrence of the sale as a precondition for the levy of differential tax. While the department sought to do this by relying upon the books of accounts of the purchasers, in the event of a denial of the transaction itself by the assessee, it was incumbent upon the department to make available the documents on the basis of which they proposed to make the addition to the sales turnover reported by the assessee. Since this has not been done and no documents were obtained from the purchasers in question to substantiate the allegation of unaccounted sales, I feel that there can be no justification for confirmation of a differential tax demand on the alleged unaccounted sales. Ext. P15 order of the respondent to the extent it makes such an addition to the turnover reported by the petitioner on the basis of the aforementioned unsubstantiated allegation must therefore be quashed, and I do so. I make it clear that the quashing of Ext. P15 order will in no way affect or modify Ext. P1 order of assessment which stood completed at the first instance. Before parting with the case, it must be noticed that Ext. P15 order, that is impugned in this original petition, is an assessment order. Under normal circumstances, the petitioner would have been relegated to the alternate remedy available under the KGST Act instead of entertaining proceedings under Article 226 of the Constitution of India. In the instant case, however, it is seen that the assessment proceedings which began in 1990 culminated in Ext. P15 impugned order dated 15.3.2003, nearly 13 years after the commencement of assessment proceedings. That apart, the original petition pertains to the year 2003 and has been pending in this Court for over 10 years. The huge delay that has been occasioned in the matter, coupled with the fact that it is fairly apparent that the department does not have any material to substantiate its proposal for addition to the reported turnover, leaves me with no option but to put a quietus to the matter by quashing Ext. P15 order in these proceedings.

The Original Petition is therefore allowed without any order as to costs.