

(2004) 02 KL CK 0044
In the High Court Of Kerala
Case No : O.P. No. 6298 of 1996 (Y)

P and P Rubber Co.

APPELLANT

Vs

Intelligence Officer, Squad No. I and Another

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 45A

Citation : (2008) 11 VST 158

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : K.B. Mohammed Kutty, for the Appellant; S. Soman, Government Pleader, for the Respondent

Judgement

Kurian Joseph, J.—Petitioner is aggrieved by exhibit P16 order passed by the first respondent. This is an order imposing a penalty u/s 45A of the Kerala General Sales Tax Act, 1963. Exhibit P16 has a chequered history. Against the earlier order of penalty imposed by the second respondent, the petitioner had pursued the matter up to the level of revision before the Commissioner. That revision was dismissed as per exhibit P 11. Though it is stated as dismissal, it is actually seen that the Commissioner had made it clear that the case was one of open remand before the original authority, interpreting the orders passed by the first revisional authority. Paragraphs 5 and 6 of exhibit P11 order makes the position clear, which read as follows:

5. The Deputy Commissioner, Ernakulam, in the order read as second paper above has set aside the order imposing the penalty and remanded the case to the Intelligence Officer Squad No. I, Ernakulam, for fresh disposal in accordance with law. Evidently the order reads as first paper above is not now in existence. Further the petitioner is at liberty to raise all his contentions before the Intelligence Officer, when the case is taken up for fresh disposal. The Intelligence Officer will be in a position to pass fresh orders after considering all those contentions.

6. It is observed that the Intelligence Officer has passed orders in this case in a very casual manner. Rubber is taxable at the last purchase point, but the same has been shown as "first purchase" in the proceedings. The suppression worked out is also incorrect as revealed from the Deputy Commissioner's proceedings. All these factors should be borne in mind while passing fresh orders.

2. Therefore, it can be seen that the Commissioner had directed the original authority to bear in mind certain crucial aspects while passing orders, including the fact that rubber is taxable only at the last purchase point within the State. Pursuant to exhibit P11, the petitioner had submitted before the second respondent a note as per exhibit P12. It is stated in the original petition that the second respondent had heard the petitioner and according to his information the second respondent had dropped the proceedings. However, as per exhibit P13, the first respondent issued another notice dated October 30, 1995. Petitioner filed exhibit P14 reply stating that the second respondent had once dropped the proceedings and in any case if fresh orders are proposed to be passed by the first respondent, it will be done only as per the clarifications/directions contained in exhibit P11 order. As per exhibit P15 petitioner also made a request for copies of certain documents. Dr. Mohammed Kutty, learned Counsel appearing for the petitioners, contends that the petitioner is entitled to get back the documents seized and only then the petitioner will be in a position to take a proper defence.

3. Exhibit P16 is the order passed pursuant to exhibit P13 notice. On a perusal of the order it is seen that the first respondent has not adverted to the contentions taken by the petitioner including the crucial aspects the Commissioner pointed out. The learned Senior Government Pleader (Taxes), however, submits that exhibit P16 is an order passed after notice to the petitioner and that the petitioner was given the required opportunity to put forward his case. In any case it is submitted that the petitioner has got a statutory remedy by way of revision against exhibit P16 and hence this Court may not interfere with the matter at this stage.

4. I am afraid the contentions of the learned Government Pleader cannot be appreciated. True, the petitioner has got a statutory remedy. But it has to be seen that the petitioner had gone through the ladder once and this is the second round. As already observed above, the records seized had not been returned to the petitioner. The crucial aspects directed to be borne in mind by the Commissioner in exhibit P11 had not been adverted to at all. All that apart though the petitioner had specifically pointed out to the first respondent that the second respondent had once closed the proceedings, there is no reference to that contention either. If the penalty proceedings had once been dropped, whether it is competent for the first respondent to initiate the very same proceedings de novo is also a question to be considered by the first respondent. Bereft of all these crucial aspects, it cannot be said that exhibit P16 is a reasonable order. I set aside exhibit P16. However, I make it clear that it will be open to the first respondent to issue fresh notice, if required, after considering the case of the

petitioner in the light of the observations contained in this judgment and then pass fresh orders in accordance with law. The original petition is disposed of as above.

Order on C.M.P. No. 10868 of 1996 in O.P. No. 6298 of 1996(Y) dismissed.