(2013) 06 KL CK 0052

In the High Court Of Kerala

Case No : Writ Petition (C) No. 4832 of 2010

Parisons Foods (P) Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 10-06-2013

Acts Referred:

Central Sales Tax Act, 1956 — Section 9, 9(2)
Kerala General Sales Tax Act, 1963 — Section 17

Citation : (2013) 3 ILR (Ker) 96 : (2013) 2 KHC 854 : (2013) 3 KLT 10 : (2013) 66 VST 243

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : A.K. Jayasankar Nambiar and E.K. Nandakumar, K. John Mathai, P. Benny Thomas and P. Gopinath, for the Appellant; Manoj P. Kunjachan), for the Respondent

Judgement

V. Chitambaresh, J.—Can an assessment under the Central Sales Tax Act, 1956 (''the CST Act'' for short) be completed belatedly by availing the time extended for the relevant year under the Kerala General Sales Tax Act 1963 (''the K.G.S.T. Act'' for short)? The petitioner filed return for the year 2003-04 under the C.S.T. Act conceding a total inter-state sales turnover of Rs. 77,77,79,446/- and claimed exemption for the turnover of Rs. 77,08,88,957/- being consignment sales. The second respondent did issue Ext.P1 notice dated 30.5.2009 under R.6(5) of the Central Sales Tax (Kerala) Rules, 1957 (''the Rules'' for short) in order to complete the assessment. The assessment could not however be completed since there was a change in the fast track team constituted under S. 17D of the K.G.S.T. Act in the meanwhile. P3 notice dated 21.2.2009 was thereafter issued after verification of the books of accounts followed by Ext.P4 revised notice dated 22.1.2010 by the second respondent under R.6(5) of the Rules. Exts.P1, P3 and P4 pre-assessment notices are impugned on the sole ground that they have been issued well beyond four years of the assessment year 2003-04 (which ends on 31.3.2004). It is fairly conceded that no period has been prescribed for completing the assessment under the Rules even though a period of four years has been prescribed for revised assessment under Rr.6(7) and 6(8) of the Rules. But the petitioner maintains that a period of four years should be read into R.6(5) of the Rules also which deals with the completion of assessment under the Act. A series of decisions starting from Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, are cited at the Bar to contend that even notices of assessment could be quashed.

2. The respondents rely on S. 9(2) of the Act and contend that the authorities constituted under the K.G.S.T. Act to make assessment are vested with the power to assess tax under the C.S.T. Act as well. Such authorities for that purpose can exercise all or any of the powers they have under the general sales tax law of the State and of course subject to the other provisions of the C.S.T. Act and the Rules made thereunder. The respondents assert that no time limit has been prescribed for completing the assessment under the C.S.T. Act or R.6(5) of the Rules and can hence bank on S. 17 of the K.G.S.T. Act. It is pointed out that S. 17 of the K.G.S.T Act as amended by the Finance Act, 2009 permits completion of assessment relating to the years upto and including the year 2004-05 pending as on 31.3.2009 on or before 31.3.2010. The respondents add that the Writ Petition filed challenging the pre-assessment notices are misconceived since the petitioner can very well file objections thereto and invoke statutory remedy thereafter if needed.

3. I heard Mr. Jayasankar, A.K., Senior Advocate on behalf of the petitioner and Mr. Manoj P. Kunjachan, Government Pleader on behalf of the respondents.

4. A cursory look at S. 9(2) of the C.S.T. Act throws an insight to the issue raised and the same is extracted below for reference:-

9. Levy and collection of tax and penalties:-

(1) XXX XXX XXX

(2) Subject to the other provisions of this Act and the rules made thereunder the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State: and for this purpose they may exercise all or any or the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relation to returns, provisional assessment advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references,

refunds, rebates, interest of penalty charging or payment of interest compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly;

(emphasis supplied)

There is obviously no embargo for the authorities to exercise all or any of the powers they have under the K.G.S.T. Act subject to the provisions of the C.S.T. Act and the Rules made thereunder in regard to completion of assessment. No period has been prescribed for completing the assessment under R.6(5) of the Rules while a period of four years is specifically prescribed for re-assessment under Rr.6(7) and 6(8) of the Rules. The failure to prescribe any period for completing the assessment under R.6(5) of the Rules is conspicuous enabling the authorities to fall back on S. 17 of the K.G.S.T. Act. S. 17 of the K.G.S.T. Act as amended by the Finance Act 2009 has extended the time for completing the assessment in question for the period upto 31.3.2010. It cannot therefore be said that Exts.P1, P3 and P4 notices dated 30.5.2009, 21.12.2009 and 22.1.2010 are on the face of it barred by limitation and hence liable to be quashed in this writ jurisdiction.

5. I may also incidentally refer to a Bench decision of the High Court of Andhra Pradesh in Andhra Sales Tax Practitioners & Consultants Association and Others v. Commissioner of Commercial Taxes & Anr. ((2002) 127 STC 177) wherein it is held as follows:- 19........By force of sub-s.(2) of S. 9 if the C.S.T. Act, the procedure provided under the general sales tax law of the State for the purposes including the purpose relating to returns and provisional assessment is made applicable to the proceedings arising out of the C.S.T. Act also. Therefore, merely because new procedure and forms prescribed under the impugned sub-rule (5-A) apply to the proceedings under the C.S.T. Act also, it cannot be said that the impugned sub-rule is unconstitutional. Sub-s. (2) of S. 9 of the C.S.T. Act thus enables the sales tax authorities under the APGST Act to invoke the provisions of the Act and the rules framed thereunder for the purpose of completing the proceedings under the C.S.T. Act.

(emphasis supplied)

A similar view is taken by the Division Bench of the same High Court in Nav Swadeshi Oil Mills Vs. The State of Andhra Pradesh, .

Heavy reliance is placed by the petitioner on State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd., to urge that a reasonable period of four years should be read into the Rules. The Supreme Court has in the said decision held that the power to revise suo motu under S. 21 of the Punjab General Sales Tax Act 1948 should be exercised within a reasonable period. The period was arrived at on the basis of the statutory scheme and the notice issued to show cause against the proposed revision of assessment order five years after its completion was quashed. It is the case of the petitioner that a period of four years for completing the assessment under R.6(5) of the Rules is reasonable when the same period has been specified for re-assessment under Rr.6(7) and 6(8) of the Rules. There is however no scope for such hypothesis in the instant case since S. 17 of the K.G.S.T. Act comes to the rescue of the respondents to complete the assessment within the extended time in view of S. 9(2) of the C.S.T. Act. I however permit the petitioner to file objection to Exts.P1, P3 and P4 notices and raise all available contentions notwithstanding the fact that its attempt to nip the assessment in the bud is hereby aborted. Resultantly the Writ Petition fails and is dismissed. No costs.

