

(2001) 12 KL CK 0066

In the High Court Of Kerala

Case No : Tax Revision Case No. 212 of 2000

Popular Automobiles

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29A(4)

Citation : (2003) 129 STC 60

Hon'ble Judges : S. Sankarasubban, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K.K. Vijayaraghavan, S.K. Devi, M. Raj Mohan, Santhosh P. Abraham, Frankur D. Jayan and Deepsur D. Jayan, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—An automobile dealer is the revision petitioner before us. The revision is against the order of the Sales Tax Appellate Tribunal confirming the penalty levied u/s 29A(4) of the Kerala General Sales Tax Act, 1963. The penalty levied by the Intelligence Officer of Sales Tax was cancelled by the first appellate authority. This is reversed on appeal by the State by the Tribunal, and the revision is against the said order of the Tribunal.

2. The petitioner, which has branches at Thrissur and Ernakulam, was transporting automobile parts in their own vehicle. The vehicle was intercepted and checked by the Sales Tax Intelligence Department at Kalamassery on June 10, 1986. It was noticed that though a departmentally issued delivery note was used to transport the goods, the value of goods shown in the delivery note was only Rs. 8,000. However on physical verification, it was noticed that the vehicle contained goods valued at Rs. 1,64,906.78, and the details of the goods were contained in 76 packing slips. Since the entire goods were not covered by delivery note, the inspecting team released the goods on furnishing security at double the amount of tax due in respect of the goods over Rs. 8,000 accounted in the delivery note. Thereafter an enquiry was conducted by the Intelligence

Officer of Sales Tax who levied penalty u/s 29A(4) of the Kerala General Sales Tax Act, 1963 at double the amount of tax and the security collected was adjusted towards penalty. The Intelligence Officer noticed that delivery note No. 224311 dated June 9, 1986 described the goods as "motor parts as per PS attached Rs. 8,000". Therefore, according to him, the dealer never intended to account the goods over the value of Rs. 8,000 mentioned in the delivery note. In other words, according to him, the goods over the value of Rs. 8,000 that is, for Rs. 1,56,906.78 were left unaccounted by the dealer. On first appeal, the first appellate authority cancelled the penalty by holding that the transaction was only a branch transfer from the petitioner's one branch to another branch in Kerala, and the same does not involve any sale, and therefore no sales tax is leviable under the Act. He accepted the theory of "clerical error" put forward by the petitioner and cancelled the penalty as one not involving attempt of evasion of tax. The Tribunal on departmental appeal called for the records and found that 76 packing slips were used by the dealer at the time of transport and the goods described in the packing slips were not included in the delivery note in form No. 26 which is a departmentally issued document. According to the Tribunal, it was a deliberate attempt on the part of the dealer to exclude the value of goods over Rs. 8,000 because the petitioner had in the delivery note mentioned the value of goods at Rs. 8,000 and further did not mention anything about the number of packing slips. The finding of the Tribunal was that this was a deliberate attempt of evasion of tax and therefore penalty was rightly levied by the Intelligence Officer u/s 29A(4) of the Act, It is this order of the Tribunal that is challenged before us.

3. The learned counsel appearing for the petitioner contended that the transaction was only a branch transfer between one branch and another branch of the dealer, and the same did not involve any sale. Consequently, counsel submitted that no inference of attempt of evasion of tax can be drawn. She also cited various decisions of this Court, namely, *Gentle Joseph & Co. v. State of Kerala* (1993] 89 STC 494 ker, P.D. Sudhi v. Intelligence Officer, Agricultural Income Tax and Sales Tax [1992] 85 STC 337, *Sunitha Diesel Sales & Services v. State of Kerala* [1996] 102 STC 448(ker) ; (1996) 2 KLT 571 and *V.V. Agencies Vs. State of Kerala*, . She also referred to the decision of the Supreme Court in *State of Kerala Vs. M.M. Mathew and Another*, and contended that strong suspicion, strange coincidence and grave doubts cannot take the place of legal proof without which penalty cannot be levied. We do not agree with the argument of learned counsel for the petitioner. On facts, the Tribunal found that the petitioner, which is a reputed dealer in automobiles managed by qualified accountants and experienced employees cannot be expected to commit a grave error of this nature. It is found by the Tribunal that the goods transported was for Rs. 1,64,906.78, which was covered by 76 packing slips. However, in the delivery note in form No. 26 prescribed under Rule 32(17) of the Kerala General Sales Tax Rules, 1963 and issued to the dealer by the department accompanying the goods, which is a document seen by the assessing officer at the time of

checking the accounts for assessment, the dealer deliberately excluded the items covered by the said packing slips, but only included the goods of the value of Rs. 8,000. This cannot be brushed aside as a "clerical error". We feel that the Tribunal rightly felt that it was conscious suppression of goods under transport in the delivery note which is a departmentally issued document to the dealer for transport of goods. u/s 29(2)(a) goods under transport in the State should be covered by delivery note in form No. 26, a sale bill, way bill or certificate of ownership. Therefore a dealer using any such document should obviously cover the entire goods transported in the said document. In the absence of inclusion of the goods transported in the document, the natural presumption is that the dealer never intended to include those items in the accounts produced before the department. This is a case where the dealer was transporting the goods in their own vehicle and two sets of documents were used for transport, one in form No. 26 accounted to the department, and the other packing slips, which are internal document of the dealer. It is pertinent to note that the Tribunal found that the dealer did not produce the packing slips used previously or subsequently to show that those are documents forming part of their accounts. Therefore the finding of the first appellate authority that sale and attempt to evade tax are necessary pre-conditions for levying penalty u/s 29A(4) is a clear misunderstanding of the section. An attempt of evasion of tax due under the Kerala General Sales Tax Act is what attracts penalty u/s 29A(4). Transfer of goods from one branch to another without accounting the same in the departmentally issued form accompanying the goods only proves the dealer's intention to do unaccounted sales. Subsequent accounting of goods after detection is not a mitigating circumstance to escape penalty. Therefore, we do not find any error in law in the finding of the Tribunal. However, in view of the decisions cited above and the accounting of goods though subsequently, we feel that levy of maximum penalty is riot called for. We accordingly reduce the penalty to one and a half times the tax sought to be evaded.

The tax revision case is disposed of by modifying the order of the Tribunal to the above extent.