

(2000) 11 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 11152 of 1996 C

Premier Steels

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala General Sales Tax Act, 1963 — Section 27, 45, 45A

Citation : (2001) 122 STC 522

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : K. Sreekumar and R. Unnikrishnan, for the Appellant; M. Manoj Kumar, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—The petitioner, a registered partnership-firm, is an assessee under the Kerala General Sales Tax Act. It is submitted that they deal with taxable and non-taxable goods, and while submitting returns for the years 1988-89 to 1990-91, mistakes had arisen due to misclassification.

2. Finding the above, in respect of the year 1988-89 the Sales Tax Officer had issued an order (exhibit P4) imposing Rs. 5,000 as penalty. It is seen that the Deputy Commissioner suo motu cancelled the order and directed a review by the first respondent. The result was exhibits P5, P6 and P7 and penalty imposed for the three assessment years went over Rs. 12 lakhs. In the revision, the second respondent, by exhibit P8, substantially reduced the penalty which came to about Rs. 4 lakhs.

3. The petitioner had filed a revision from the orders, u/s 45A(5) of the Act. Pending the above, the Commissioner (third respondent) gave notice proposing to set aside exhibit P8 order and for restoring exhibits P5 to P7. After hearing all the matters, the third respondent had issued exhibit P17 restoring exhibits P5 to P7. These are under challenge.

4. The petitioner's contentions are two fold. It is submitted that there was no sufficient circumstances or reason for initiating action u/s 45A of the Kerala General Sales Tax Act, 1963. The reason urged is that it was not a case of suppression, but only a misclassification of items, and the entire transactions had found place in the book of accounts of the petitioner. Therefore, following the line of decisions of this Court, it was submitted that there was no justification for imposition of the maximum penalty.

5. The other limb of argument was on the ground of limitation. It had been submitted that an order of penalty is barred when the notice of imposition thereof is issued beyond the time prescribed u/s 19(2) of the Act. It had been submitted that in respect of all the concerned years, notices proposing penalty had been issued after the maximum prescribed limit (of four years at the relevant time).

6. A counter-affidavit has been filed by the Deputy Commissioner (Law) contending that the original petition is an abuse of the process of the court. The penalty was inevitable, according to the department, since there were basic accounting defects, which would have gone unnoticed if there was not a critical scrutiny as had been carried out. In spite of their duty, the assessee had failed to keep separate accounts in respect of taxable and non-taxable items and evasion was the only possible aim. Only inferences were possible and there were strong circumstances to indicate that deliberate manipulation was attempted to be practiced. It had been found by the assessing authority that there was violation of Section 45A(1)(b), (d) and (g). Restoration of the order passed by the assessing authority by the Board of Revenue was legal and proper and the order gave explicit reasons, according to them, to impose the penalty.

7. In respect of the contentions regarding limitation, there was no specific answer. But on an examination of the dates I find that there is no ground to accept the contention that proceedings are barred by limitation. The department has a contention that being proceedings u/s 45A of the Act, the period prescribed by Section 19(1) has no relevance at all. The limitation prescribed during the period was four years from the expiry of the year to which the tax related. In respect of 1988-89, the assessment was completed on September 28, 1992 and on the very same day by exhibit P5 penalty was imposed. The subsequent proceedings were based on the above penalty advice, and it could not have therefore been contended that it was hit by limitation. The revised orders of December 26, 1994 were not by way of independent proceedings.

8. As far as the penalty advice in respect of the year 1989-90, the assessment was completed by September 2, 1993, and the penalty proceedings were passed on December 26, 1994. It is argued that the expiry of the year is the last day of December, 1993. In respect of 1990-91, such a claim of limitation has not been urged at all. But the proceedings very well indicate that they have been issued u/s 45A of the Kerala General Sales Tax Act, 1963. As I see Section 19 springs to operation in a case where the assessment once completed gets reopened, on a

future occasion. The limitation is prescribed for the reason that the assessee had been advised that the formalities had been completed and the files closed. The contingencies covered are (1) there is escaped turnover ; (2) where the turnover is under-assessed ; (3) where assessment is done at a lower rate than admissible and (4) a deduction has been wrongly made. But impugned orders were not passed in this context. The defect in the returns were noticed even at the time of the assessment, and it can only be considered that the invocation of power was u/s 45A of the Act. The issue of limitation did not arise. I am therefore of the opinion that proceedings are valid and the challenge on the ground of limitation has to be rejected.

9. The next contention of the counsel for the petitioner was that imposition of penalty is based on principles of proportionality. The king-pin of the argument was the circumstance that the transactions were included in the account books of the company, and it was only a case of misclassification. It is urged that there was no contumacious conduct of deliberate avoidance of tax payable and the penalty proceedings which can be equated to quasi-criminal proceedings could be initiated only on a definite finding that there was a guilty mind behind the exercise. The argument is opposed by Sri Manoj, learned Government Pleader. He reiterates that it can be taken as a case of deliberate misleading. He advanced three contentions in support of his stand. Firstly, the accounts of 1988-89 were subjected to assessment orders on September 28, 1991. The misclassification was found out even at that time, and there was no valid explanation. Secondly, there was no application for a correction nor permission sought for submitting a revised assessment proceedings. Even after receiving the assessment order and penalty advice, the mistakes continued in the accounts, and therefore it was proof positive that attempt was to misguide. The assessee was aware of the mistakes and was attempting to mislead the department. The omission was clear to any discerning eye, and the accounts were therefore totally unacceptable.

10. It was also submitted that it was the primary duty of the assessee to keep separate accounts for taxable and non-taxable items, and there could not have been any leniency for the mistakes and omissions committed by themselves. Therefore, according to the counsel, principles of proportionality had no relevance or application.

11. It was lastly contended by the Government Pleader that every aspect of the case had been examined, and it was on a mature discussion that the department had come to an opinion that penalty u/s 45A of the Act had to be imposed. He added that the opinion expressed by the Revenue Board that it was a case where the petitioner was practising a systematic and calculated method of evasion was wholly justified.

12. The improper accounts for years together, pointed out by the Government Pleader, if went unnoticed would have resulted in gross revenue loss, and therefore the assessee did not deserve any leniency as he had failed to observe

the mandate of Section 27 of the Act. Even by exhibit P4, the above finding had been recorded. In the aforesaid circumstances, I am of the view that no interference in the proceedings are warranted. The proceedings do not suffer from any jurisdictional error. The assessee admits that the accounts did not reflect the correct position. The mistaken assessment was presented for three consecutive years. In the circumstances, the case do not merit interference under Article 226 of the Constitution of India. The original petition is dismissed. No costs.

Order on C.M.P. No. 19352 of 1996 in O.P. No. 11152 of 1996C dismissed.