(2013) 01 KL CK 0196

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28627 of 2012 (C)

Premkumar P. APPELLANT

Vs

Sales Tax Officer-I RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Citation : (2013) 1 KHC 331

Hon'ble Judges : Mr. Antony Dominic, J.

Bench : Single Bench

Advocate : Shoba Annamma Eapen, Sr Government Pleader, for the Respondent; Sri. M.K. Dileep Kumar, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Antony Dominic, J, - Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

2. Petitioner is a dealer registered under the KVAT Act. He obtained registration during the year 2011. At that time, he furnished security of Rs.75,000/- as provided under Section 17(1) of the KVAT Act (hereinafter referred to as ''the Act'' for short). Subsequently, respondents demanded additional security of Rs.5,00,000/- which was also remitted. Still later, petitioner was issued Ext.P3 notice stating that, having regard to the volume of transactions, in order to protect the interest of the revenue, he should furnish an additional security of Rs.50,00,000/-, in any manner as provided under Section 17 of the Act r/w Rule 19 of the KVAT Rules. Petitioner did not furnish security as directed. Therefore, Ext.P6 order was issued cancelling his registration both under the Act and under CST Act. It is challenging Ext.P6 order, the writ petition is filed.

3. A reading of Ext.P6 shows that in addition to the powers under Section 17 of the KVAT Act, power under Section 7(4)(b) of the CST Act has also been invoked and that it is accordingly that registration under the KVAT Act and CST Act were cancelled. Contention raised by the counsel for the petitioner is that the

registrations under the KVAT Act and CST Act have been cancelled ignoring the provisions of Section 17 of the KVAT Act and Section 7 of the CST Act and therefore, the impugned proceedings are illegal.

4. However, learned Government Pleader contended that in addition of the security as provided under Section 17(1) and (2) of the Act and Section 7(2A) of the CST Act, in order to protect the interest of the revenue, additional security can be demanded in view of the proviso to Section 17(2) of the Act and Section 7(3A) of the CST Act. Therefore, according to her, there is no illegality in the impugned proceedings justifying interference.

5. I have considered the submissions made.

6. The correctness or otherwise of the stand taken by the rival parties will have to be decided in the light of the statutory provisions. Section 17(1) and (2) of the KVAT Act and its proviso, being relevant, read thus:-

17. Security to be furnished in certain cases

- (1). Where the registering authority has reason to believe that a dealer is likely to make default in payment of tax or other amount due under this Act, he may, by order in writing, demand security from the dealer for an amount not exceeding one half of the tax payable on the turnover of the dealer for the year as estimated by the registering authority.

(2). Notwithstanding anything contained in sub-section (1), the registering authority may, at the time of registration, demand security by order in writing from every dealer effecting first sale of goods within the State an amount not exceeding one half of the tax payable on the turnover of the dealer for the year as estimated by the registering authority:

Provided that the registering authority shall have the power to demand at any time additional security if such authority has reason to believe that the turnover estimated under sub-sections (1) or (2) was too low.

Provided further that no security or additional security shall be demanded under this sub-section from a dealer falling under clause (ii) of sub-section (2) of section 15.

7. Insofar as Section 17 of the KVAT Act is concerned, sub section (1) enables the registering authority to demand security from the dealer for an amount not exceeding one half of the tax payable for the year on the turnover of the dealer as estimated by him. Sub section (2) deals with the case of dealers effecting first sale of goods within the State, in whose case also, security of an amount not exceeding one half of the tax payable on the turn over as estimated by the registering authority can be demanded. Proviso states that the registering authority shall have the power to demand at any time additional security, if such authority has reason to believe that the turn over estimated under sub section (1) or (2) was too low. Thus, additional security can be demanded by the

registering authority only in a case where he is satisfied that the turn over estimated by him under sub section (1) or (2) for the purpose of fixing one half of the tax payable for the year is too low. These provisions of the Act make it clear that the maximum amount for which security can be ordered to be furnished under sub section (1) or (2) is one half of the tax payable, which is based on the turnover as estimated by the Registering authority. Once registration is granted accepting security as above, when turnover estimated based on which one half tax payable is fixed, is found to be too low, for making up the shortage of the one half of the tax payable as security, additional security can be demanded.

8. Insofar as CST Act is concerned, the relevant provisions are Sections 7(2A), (3A), (3B) and (3BB) which read as under:-

7(2A). Where it appears necessary to the authority to whom an application is made under sub-section (1) or sub- section (2) so to do for the proper realisation of the tax payable under this Act or for the proper custody and use of the forms referred to in clause (a) of the first proviso to sub-section (2) of section 6 or sub section (1) of section 6A or [sub-section (4) of section 8], he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a certificate of registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes.

7(3A). Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of tax payable under this Act or for the proper custody and use of the forms referred to in sub-section (3A), he may, at any time while such certificate is in force, by an order in writing and for reason to be recorded therein, require the dealer, to whom the certificate has been granted to furnish within such time as may be specified in the order and in the prescribed manner such security, or if the dealer has already furnished any security in pursuance of an order under this sub- section or sub-section(2A) such additional security, as may be specified in the order, for all or any of the aforesaid purposes.

7(3B). No dealer shall be required to furnish any security under sub-section (2A) or any security or additional security, under sub-section(3A) unless he has been given an opportunity of being heard.

7(3BB). The amount of security which a dealer may be required to furnish under sub-section(2A) or sub-section (3A) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under sub-section(3A), by the authority referred to therein shall not exceed-

(a). in the case of a dealer other than a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax payable under this Act, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished; and

(b). in the case of a dealer who has made an application or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax leviable under this Act, in accordance with the estimate of such authority on the sales to such dealer in the course of inter-State trade or commerce in the year in which such security or, as the case may be additional security is required to be furnished, had such dealer been not registered under this Act.

9. As far as the provisions of the CST Act are concerned, here also, Section 7(3A) provides not only for furnishing of security but also additional security. However, maximum amount for which additional security can be demanded is prescribed in sub section (3BB). This again is related to the turnover estimated by the registering authority. Therefore, under the CST Act also, additional security can be demanded only to make up shortage of security which is subject to the maximum limit prescribed in the Act.

10. Having thus understood the statutory provisions, the question to be considered is whether Ext.P3 notice and Ext.P6 order were issued by the 1st respondent adverting to the provisions of Section 17 of the KVAT Act or Section 7 of the CST Act. A bare reading of these documents show that it was without taking into account these aspects, additional security was demanded and the registration was cancelled.

11. For the aforesaid reasons, I set aside Exts.P3 and P6. It is directed that it will be open to the 1st respondent to initiate fresh proceedings, if he is so advised. If the 1st respondent intends to initiate fresh proceedings, he shall issue notice without any delay and on that basis, fresh orders shall be passed within six weeks of production of a copy of this judgment.

12. Petitioner will produce a copy of this judgment along with a copy of the writ petition before the 1st respondent for compliance.

Writ petition is disposed of as above.

