(1994) 06 KL CK 0032

In the High Court Of Kerala

Case No : O.P. No. 8278 of 1994

R. Chandrahasan APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 27-06-1994

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 36, 38, 46, 47, 47(1)

Citation : (1994) 06 KL CK 0032

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : O. Ramachandran Nambiar, for the Appellant; S. Vijayan Nair, for the Respondent

Judgement

P.A. Mohammed, J.—The Petitioner, an Assessee under the provisions of the Kerala General Sales Tax Act. (for short ''the act''), challenges Ext. P-8 order passed by the Board of Revenue u/s 38 of the Act. He filed an application dated 14th July 1987 for compounding an offence u/s 47 of the Act. By the order dated 17th July 1987 the second Respondent allowed the application and compounding fee of Rs. 4,000 was fixed. Ext. P-1 is the order passed by the second Respondent. Pursuant to Ext. P-1 the Petitioner remitted the aforesaid compounding fee on 16th July 1987. After the payment the Petitioner realised that there was a mistake in so far as the unaccounted purchase of timber logs as revealed in Ext. P-1. Thereupon he filed a revision before the third Respondent; but met with no success. Then he filed a further revision before the Board of Revenue and the same was dismissed as per Ext. P-8 order.

2. Section 47 of the Act authorises the composition of offences. Sub-section (1) of the said section authorises the assessing authority or other officer or authority authorised by the Government in that behalf may accept from any person who has committed or is reasonably suspected of having committed an offence against the Act to compound the offence. The offence alleged in the present case is one u/s 46 of the Act. The word ''compound'' has different meanings. In the

present context the meaning that can be attributed to it is, to agree for a consideration not to prosecute an offence. The composition of offence does not mean the offence has not been committed. It only means the State is agreed not to prosecute the offence already committed on payment of compensation. When the offence is alleged u/s 46, the Assessee is entitled to file an application for composition of offence. After accepting the application, the authority concerned has to pass an order allowing the compounding. When the order for compounding is passed then there is an option before the Assessee either to pay the compounding fee or to refuse payment. If there is a dispute with regard to the quantum of compounding fee levied under Clause (a) of (b) of Sub-section (1) of Section 47 or for some other reason the Assessee can refuse payment of the compounding fee. That means there is no compounding of offence. When the Assessee accepts the order and pays the compounding fee the process of compounding is complete because the concept of compounding envisages a bilateral agreement. Then the Assessee cannot go back and say that there is no compounding of offence. In this case the Petitioner in compliance of Ext. P-1 order paid the compounding fee. That means the compounding is complete. This is not a case where the Assessee has any grievance which comes within the purview of Clause (a) or (b) of Sub-section (1) of Section 47 of the Act. That being the position, no revision can be filed against the order of compounding which is completed by payment of compounding fee. In this case the Petitioner has filed a revision u/s 36 of the Act before the Deputy Commissioner against the order levying the compounding fee. The case of the Petitioner is that there are certain mistakes in Ext. P-1 order and irregularities alleged are unreal. If that is so, the same should have been raised before the payment of the compounding fee. At any rate, when composition of offence is complete on payment of compounding fee, there is room for further grievance. In that view of the matter the contention raised by the Petitioner cannot be gone into either by the Deputy Commissioner u/s 36 or by the Board of Revenue u/s 38. The orders passed by the Deputy Commissioner as well as the Board of Revenue are non est and void ab initio. Ext. P-1 order passed by the second Respondent survives. Therefore no interference is called for in the present proceeding.

3. In view of what is said above, this Original Petition is liable to be dismissed. I do so.

