

(2002) 10 KL CK 0079

In the High Court Of Kerala

Case No : W.A. No's. 1501 and 1503 of 2002

Reliance Generators Pvt. Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10, 2, 7(7B)
Kerala General Sales Tax Rules, 1963 — Rule 22(3), 30A(6)

Citation : (2006) 146 STC 61

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : K. Ramkumar and T.V. Lakshmanan, for the Appellant; Raju Joseph, Sr. Government Pleader for Taxes, for Respondent Nos. 1 and 2 and K.M. Jamsludheen, Additional CGSC and Sudhi Vasudevan, ACGSC, for the Respondent Nos. 3 to 11, for the Respondent

Judgement

S. Sankarasubban, J.—In both these writ appeals, appellant is same. He is the petitioner in the original petitions. W.A. No. 1501 of 2002 is filed against the judgment in O.P. No. 38164 of 2001*, while W.A. No. 1503 of 2002 is filed against the judgment in O.P. No. 37942 of 2001. The prayer in O.P. No. 38164 of 2001* is to issue a writ of mandamus directing the fifth, sixth and seventh respondents to issue the forms as prescribed Under Sub-clause (4) of clause 1 read with Schedule annexed to the Notification in S.R.O. No. 1728/93 to the petitioner for the works executed by them during the periods 1995-96 and 1996-97 for them to claim reduced rate of tax at 4 per cent. The facts of the case are as follows:

2. The petitioner was awarded contract for supplying, installing, testing and commissioning of diesel generator sets to various telephone exchanges of Department of Telecom, Kerala, which are within the administrative control of third to seventh respondents. The petitioner has been fulfilling the contracts as per the award for the past more than a decade. The petitioner has been reporting the turnovers to the first respondent regularly for each assessment

year. The petitioner registered itself under the Kerala General Sales Tax Act, 1963 (hereinafter referred to as "the KGST Act"). The transaction between the petitioner and the fifth, sixth and seventh respondents under the above contracts is an inter-State transaction, as the materials were moved from outside the State of Kerala for the purpose of fulfilling the contract.

3. For the assessment year 1995-96, on advice the petitioner reported the entire total receipts of Rs. 1,78,52,422 being receipts from the three electrical divisions in Kerala and the taxable turnover at Rs. 1,24,96,695 under the KGST Act and also calculated the sales tax payable at 4 per cent and tax being Rs. 4,99,868 and surcharge of Rs. 49,897 and total tax of Rs. 5,49,855. The first respondent when passing the assessment order dated August 18, 2000 accepted the turnovers reported, but arrived at the tax payable at the rate of 10 per cent and imposed a tax of Rs. 12,49,670, surcharge of Rs. 1,24,967 and penal interest of Rs. 11,12,206. The reason for assessment at higher rate of tax was that the petitioner did not furnish a form prescribed in annexure in Notification S.R.O. No. 1728/93.

4. For the assessment year 1996-97 the petitioner reported the entire total receipts of Rs. 4,12,96,468 being receipts from the three electrical divisions in Kerala and the taxable turnover at Rs. 2,89,78,228 under the KGST Act and also calculated the sales tax payable at 4 per cent and tax being Rs. 4,99,868 and surcharge of Rs. 49,897 and total tax of Rs. 5,49,855. The fifth, sixth and seventh respondents, when passing the assessment order dated February 16, 2001 accepted the turnovers reported, but arrived at the tax payable at the rate of 10 per cent and imposed tax of Rs. 28,97,823 surcharge of Rs. 2,89,782 and penal interest of Rs. 25,21,100. For the assessment year 1995-96 the petitioner has supplied and installed the telephone exchanges, within the administrative control of the fifth, sixth and seventh respondents. The petitioner has stated the break up value for all these years.

5. The first respondent issued notice of assessment to the Executive Engineers for other divisions and the seventh respondent directing them to withhold payments to the petitioner and to pay over any amount due by them to the petitioner, to first respondent. Accordingly, they also withheld the disbursement of payments due on the works executed by the petitioner. The said notice has been issued by the first respondent because of two reasons: (a) A certificate in proper form from the fifth, sixth and seventh respondents that the petitioner supplied goods to them, who are Government departments, was not produced; (b) the first respondent has not given credit to the tax deductible by the fifth, sixth and seventh respondents, being awarders of the contract u/s 7(7B) of the KGST Act.

6. Section 10 of the KGST Act empowers the Government to make an exemption or reduction in rate for the reasons and circumstances mentioned in the section. Accordingly, the Government of Kerala has issued a Notification in S.R.O. No. 1728/93 reducing the rate of tax of different goods in different circumstances. As

per Sub-clause (4) of clause 1 read with Schedulev.annexed to the notification, the rate of tax in respect of goods sold to Central or State Government department is reduced to 4 per cent if the seller produces certificate in duplicate in the form in the annexure I to the said notification. As per Section 2(xxi), sale also includes works contract where there is a transfer of property. The fifth, sixth and seventh respondents have issued form D prescribed under the Central Sales Tax Act. However, the first respondent has treated the transaction as liable to tax under the KGST Act, form D issued by the second respondent was not treated as a proper form entitling the petitioner to claim reduced rate of tax. The fifth, sixth and seventh respondents being a department of Central Government under S.R.O. No. 1728/93 Under Clause 1(4) read with Schedulev.to the notification the tax payable on this in respect of sale of goods to the fifth, sixth and seventh respondents is only 4 per cent. But there is a condition in the notification that the said reduced rate of tax could be availed only if a certificate in duplicate as given in the annexure to the notification is issued by the fifth, sixth and seventh respondents. For the purpose of claiming reduced rate of tax, the petitioner approached fifth, sixth and seventh respondents requesting them to issue proper form to them. They sent communications to that effect. Copies of the letters are exhibits P9, P10 and P11. The fifth respondent replied saying that such forms could be issued only to the dealer registered under the KGST Act. The petitioner was advised to submit that neither Section 10 nor the Notification S.R.O. No. 1728/93 make the distinction between the dealer registered under the KGST Act or unregistered dealers. In fact, the determining factor for reduced rate of tax in respect of Schedulev.is the purchaser and not the seller.

7. A counter-affidavit has been filed by respondents 3 to 7. This case was heard along with another case filed by the present petitioner, i.e., O.P. No. 37942 of 2001*, against the judgment of which W.A. No. 1503 of 2002 is filed. The petitioner in O.P. No. 37942 of 2001* is the petitioner in the other original petition. Prayers in O.P. No. 37942 of 2001* are to issue a writ of certiorari calling for the records on files of the second respondent in this proceeding in assessment No. 1119-00 97/95-96, 96-97 dated November 24, 2001 and quash the same as ultra vires, illegal and suffering from the vice of error on the face of the records and to declare rule 30A(6) of the KGST Rules as ultra vires the powers of rule-making and beyond the scope of sections 7(7B) and 10 of the KGST Act or in the alternative direct the sixth, seventh and eighth respondent to issue the forms prescribed under Rule 30A(6) of the Kerala General Sales Tax Rules, 1963 to the petitioner. Learned single Judge, who heard both cases, delivered common judgment*, disposing of the cases as follows:

original petition is disposed of directing the petitioner to approach the Sales Tax Officer (WC) for appropriate certificates Under Rule 22A(3). There will be a further direction to the said officer to complete the petitioners assessment without any delay to enable the petitioners to settle their accounts with B.S.N.L. If there is grievance in the *See pae 57 supra. assessments made, petitioner is free to file appeal. The Sales Tax Officer (Works Contract), will within three

weeks from the date of production of accounts and certificates from the B.S.N.L. by the petitioners, determine the appropriate tax liability and modify form 16 issued, so that BSNL can release payment of the petitioners after deducting and remitting actual tax due in respect of the work.

8. Sri. T.V. Lakshmanan, learned Counsel for the appellant argued before us that the remedy given under the Act is not adequate. According to him, respondents 5 to 7 are obliged to issue forms to the appellant and further he also submitted that under the Act and Rules, taxable amount has to be withheld by respondents 2 to 7 and hence, instead of approaching the appellant, the authorities can approach those people for payment of tax.

9. After hearing both sides, we dispose of the writ appeals as follows: The appellant wants forms under the notification, S.R.O. No. 1728/93. We are of the view that the approach of respondents 5 to 7 is not correct. If what the appellant says is correct, the appellant will be entitled to reduced rate of tax, if sale is made. Hence, we direct respondents 5 to 7 to issue necessary forms as per S.R.O. No. 1728/ 93. So far as the deduction of tax is concerned, the amounts are with respondents 5 to 7 and they are liable under the Act. The assessing authority can take steps for the payment of tax.

Writ appeals are disposed of as above.

Order on C.M.P. No. 3841 of 2002 in W.A. No. 1503 of 2002 dismissed. - I