

(2006) 09 KL CK 0001

In the High Court Of Kerala

Case No : S.T. Rev. No's. 77, 81, 138 and 183 of 2003

Renuka Agencies

APPELLANT

Vs

Intelligence Officer (IB) and Others

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17, 17(3), 30B, 30B(1), 30B(2)

Citation : (2008) 12 VST 433

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

**Advocate : M. Ramesh Chander and P. Raghunath, for the Appellant;
Georgekutty Mathew, Government Pleader, for the Respondent**

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—These connected tax revision cases arise from the common order of the Tribunal sustaining sales tax assessments of the petitioners under the Kerala General Sales Tax Act, 1963 for the year 1991-92. All the petitioners have held registration under the Pondicherry General Sales Tax Act, 1965 in Mahe during the year 1991-92. Mahe is a Union territory area under Pondicherry in Kerala with a square area of around 5 sq. kms., and a population of around 30,000. Several cases reaching this court prove that Mahe is used as a pocket for evasion of sales tax legitimately due to the State of Kerala. In fact, most sales accounted in Mahe take place in Kerala in a clandestine manner. This is because relatively much lower rate of tax is payable on goods under the Pondicherry General Sales Tax Act. Therefore tax which would not otherwise be due to that Government gets paid there on account of parties accounting Kerala-sales in Mahe. For example, the product involved in this case is ghee, rate of tax for which in Kerala during the relevant year was 10 per cent whereas the rate of tax in Mahe was one per cent. On enquiry with the seller of RKG brand ghee at Kankeyam in Tamil Nadu, the Sales Tax Intelligence Department in Kerala got the information that the said dealer during 1991-92 sold ghee worth Rs. 3.27 crores

to Mahe, whereas sales to all dealers in Kerala during the year was only Rs. 1.08 crores. The supplier obtained C forms from the buyers for the entire sales to Kerala and Mahe. Therefore, obviously the purchases were for retail sale or for consumption. The Intelligence Department had no difficulty to assume that Rs. 3.27 crores worth ghee from one single company could not be consumed by around 30,000 people in Mahe in one year and therefore they conducted further enquiry. It was noticed that the goods were transported by road and after collecting form No. 27C at the entry check-post in Kerala the same was not surrendered at the exit check-post in Kerala at Mahe border. Lack of production of form No. 27C at the exit check-post in Kerala at Mahe border gives rise to presumption of local sales in Kerala. Therefore as provided u/s 30B(2) of the KGST Act the department presumed local sales and issued notice to the petitioners. The case of the petitioners was that they had furnished form No. C obtained from Mahe and they appear to have produced photocopy of delivery notes with check-post seals which were found to be bogus. Therefore notices were issued proposing assessment in Kerala and after overruling objections, assessments were completed against the petitioners. Though first appellate authority allowed the appeals without properly understanding the statutory provisions on assessment, the Tribunal by detailed order set aside the appellate order and restored the assessments. It is against this order that the petitioners have filed these revision petitions.

2. During hearing, counsel for the petitioners contended that assessment in the first place should have been made u/s 30B(3) of the Act, and if it is made, it should be made on the driver or owner of the vehicle. However, we find from the order of the Tribunal that the Tribunal has confirmed the assessment as one passed u/s 17(3) of the Act. The question therefore to be considered is whether the assessment is to be made on the owner or driver of the vehicle as claimed by the petitioners. In order to appreciate the contention, Section 30B with relevant sub-sections have to be referred to and for easy reference the provisions are extracted hereunder:

30B. Transit of goods through the State and issue of transit pass.--(1) When a vehicle or vessel carrying goods from any place outside the State and bound for any place outside the State passes through the State, the owner or driver or person-in-charge of such vehicle or vessel shall obtain a transit pass in the prescribed form for such goods from the officer-in-charge of the first check-post after his entry into the State and deliver it to the officer-in-charge of the last check-post before his exit from the State.

(2) If the owner or driver or person-in-charge of such vehicle or vessel fails to deliver the transit pass for such goods referred to in Sub-section (1) to the last check-post, it shall be presumed that such goods which are liable to tax under this Act have been delivered within the State for sale:

Provided that where the goods carried by such vehicle or vessel are, after their entry into the State, transported outside the State by any other vehicle or

conveyance, the onus of proving that goods have actually moved out of the State, shall be on the owner or driver or person-in-charge of the vehicle or the vessel, as the case may be.

(3) Where it is presumed under Sub-section (2) that the goods carried in a vehicle or vessel have been delivered within the State for sale by the owner or driver or person-in-charge of the vehicle or vessel, such owner or driver or person-in-charge of the vehicle or vessel shall be jointly or severally liable to pay tax which shall be assessed and recovered in accordance with the relevant provisions of this Act, irrespective of the limit of any turnover together with an amount of penalty not exceeding twice the amount of such tax as may be assessed, after having given to the person or persons aforesaid an opportunity of being heard by the assessing authority under whose jurisdiction the check-post is situate.

(4) ...

3. Apparently petitioners' contention that driver or owner of the vehicle should be assessed under Sub-section (3) above is correct. However, the question involved in this case is whether the department which established purchases, ownership and sales in this State by petitioners, can assess the sales turnover at their hands u/s 17 of the Act and demand tax in Kerala. Any person purchasing and selling goods who has turnover above the non-taxable limit is liable to pay sales tax in Kerala under the charging section, namely, Section 5 of the KGST Act. Procedure for assessment is contained in Section 17. The finding of the department is that outside Kerala suppliers have confirmed purchases of goods by the petitioners from them against form C obtained and issued from Pondicherry. Petitioners have also not denied the transactions of purchases made by them, but their case is that goods were delivered in Pondicherry as apparently made out. Issuance of C forms from Pondicherry after accounting purchases by them there, is also not denied by them. Issuance of C form by itself is not proof of delivery of goods in the State wherefrom C forms are obtained. C form is only evidence of accounting of inter-State purchases, irrespective of the fact that goods were received in that State or not. All that Section 30B(2) says is that where transit pass issued at entry check-post is not surrendered under Rule 35(14) of the Rules in the exit border check-post of this State, there is a presumption of delivery of goods within the State for sale. Since petitioners were proved to be, or rather admitted to be, the owners of the goods, as they have admittedly paid for the same, and issued C forms obtained from Mahe and transported the goods through Kerala without surrendering form No. 27C at the State border check-post, the presumption of sale of goods in Kerala under the above provisions is available. The further inference is that the clandestine sales in Kerala are organised and done by the petitioners. If petitioners have brought goods and sold in Kerala, turnover of which is above non-taxable limit, liability for payment of sales tax is automatic by virtue of charging section, namely, Section 5. The question of assessment u/s 30B(3) on driver or owner of the

vehicle arises if the department cannot establish the actual person who brought, and sold goods in Kerala. Section 30B is only protective provision to deem the driver or owner of the vehicle as owner of the goods if the identity of the person who brought and sold the goods in the State, i.e., the actual dealer who carried on clandestine business, is not established by conclusive evidence. However if the actual dealer who carried on business is proved, then assessment has to be made on such dealer who did the business. Above all, owner or driver of the vehicle in which goods are transported is only an agent of the consignor or consignee of goods. In other words, their capacity is only representative as agent of the owner. Even though they have absolute liability u/s 30B(3), we are of the view that assessment against driver or owner can be done only if the real owner of the goods is not identified. In any case the department's right to assess the driver or owner by virtue of the deeming provision u/s 30B(3) does not take away their right to assess actual dealer who carried on business in the State.

We therefore uphold the order of the Tribunal, confirming the assessment on the petitioners u/s 17(3) read with Section 30B(2) of the Act. Tax revision cases are accordingly dismissed.