
(1996) 10 KL CK 0006
In the High Court Of Kerala
Case No : T.R.C. No. 37 of 1994

Sagar Dye-Chem

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-10-1996

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29A

Citation : (2003) 133 STC 478

Hon'ble Judges : V.V. Kamat, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : T.M. Sreedharan, for the Appellant; V.C. James, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.V. Kamat, J.—It is difficult to understand the imposition of penalty in a proceeding u/s 29A of the Kerala General Sales Tax Act, 1963 which empowers the Intelligence Officer-in-charge, for the purpose of verification of the documents required u/s 29(2) to be in the possession of the person transporting the goods, for reaching satisfaction that there is no evasion of tax. This is in view of undisturbed findings, there being no dispute that the petitioner-assessee has paid the tax through his monthly returns, nay, this has been found consistently by all the three authorities.

2. The Sales Tax Officer (Enquiry), Kozhikode specifies in the following manner :

"It is true that they have accounted for the sales as evidenced from the books of account. But the action here was initiated u/s 29A as the records accompanying the transport was not in accordance with the provisions of the Act."

Yet he finds fault in the delivery note in form No. 26 or at least the carbon copy of the bill was not found with the transport carrier.

3. An amount of Rs. 4,693 was imposed as penalty on the owner of the goods.

4. Before the first appellate authority the following was specifically submitted :

"The detention of the inspection may be correct as the transport was not accompanied by a printed copy of the bill. But absence of bill with the consignment by itself is not a reason to support a finding of evasion of tax at the stage of enquiry u/s 29A(4), There should be a positive supported by valid data and material that there was attempt at evasion of tax. Such a finding is lacking in this case. The very fact that the sales were accounted in the regular books of account prior to the time of detention itself will prove that there was no attempt at evasion of tax and that the absence of the printed bill with the consignment was caused only due to a mistake on the part of the concerned clerk."

and in regard thereto the appellate authority has also re-emphasised as follows :

"Of course the appellant has accounted for the sales as per the records subsequently produced before the officer but this cannot nullify the attempted evasion of tax established by the officer."

This would show that there was some irregularity in the transport. It is clear that if this is the factual position that has been found, the imposition of penalty cannot be justified.

5. The Tribunal also does not dispute this position that there is no evasion of tax.

6. This Court, *Sunitha Diesel Sales & Services v. State of Kerala* [1996] 102 STC 448 : 1996 KLJ 259 of which one of us (myself) was a partner, had an occasion to observe that the officer conducting the enquiry as a result of the interception is bound to consider documents produced before the adjudicating officer during enquiry and if it leads to the situation of proof that there was no evasion of tax, penalty could not be understood to be justifiably leviable. It is sufficient that the party produces material to satisfy the adjudicating authority that there was no attempt at evasion of tax by producing the necessary documents during the course of the enquiry that follows after interception.

7. In view of the above, when the payment of tax is abundantly established, the proceedings resulting in the imposition of penalty of Rs. 4,693 get vitiated.

8. For the above reasons all the three orders get quashed and set aside, The revision petitioner is entitled to refund of the amount of penalty of Rs. 4,693 forthwith. Forthwith should mean within a period of one month from the presentation of the copy of the order before the appropriate authority.

The tax revision case succeeds accordingly.