(2008) 07 KL CK 0028

In the High Court Of Kerala

Case No : S.T. Rev. No. 192 of 2008

Sangeetha Ready Made World APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 21A, 29(2), 29A(2)

Citation : (2008) 17 VST 51

Hon'ble Judges : H.L. Dattu, C.J;A.K. Basheer, J

Bench : Division Bench

Advocate : Bobby John and P.N.D. Namboothiri, for the Appellant; Muhammed Rafiq, Sr. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.L. Dattu, C.J.—Sri Muhammed Rafiq, learned Senior Government Pleader, takes notice for the respondent.

2. Since the issue involved in this revision petition lies in a narrow compass, though the matter is listed for admission, by consent of the learned Counsel appearing for the parties to the lis, the revision petition is taken up for final hearing.

3. The assessee has raised the following questions of law for our consideration and decision. They are as under:

(i) Is the Tribunal correct in holding that the subsequent production of document in the case would not absolve the assessee from the liability?

(ii) Whether the Tribunal is justified in restoring the penalty which is solely based on certain technical omissions in preparing the invoices?

(iii) Whether the Tribunal is justified in cancelling the first appellate order when there is no valid reason to deviate from the findings of the first appellate authority?

(iv) Whether the Tribunal is justified in restoring the penalty imposed by the Intelligence Officer on the basis of mere presumptions?

(v) Whether the penalty u/s 21A of the KGST Act can be imposed for the technical omissions such as minor variation in the address, absence of RC No. the invoice, etc., particularly when the consignee has properly accounted the transaction and there is no scope for evasion of tax?

4. The petitioner-firm is engaged in the sale of ready-made clothes and is registered as a dealer both under the provisions of the Kerala Value Added Tax Act, 2003 ("the KVAT Act", for short) and the Kerala General Sales Tax Act, 1963 ("the KGST Act", for short).

5. The Intelligence Officer attached to the Intelligence Wing of the Department had intercepted the vehicle bearing registration No. KBT 4696 on August 18, 2004. On verification of the goods that were carried in the vehicle, the officer was of the opinion that for transportation of the goods the person in-charge of the vehicle was not carrying the documents prescribed under the Act and the Rules framed thereunder. Therefore, he was of the opinion that there is an attempted evasion of payment of tax by the dealer. Accordingly, he had detained the vehicle and after accepting the security deposit to the tune of Rs. 36,430 had released the vehicle and also the goods to the dealer.

6. Subsequently, the Intelligence Officer had transmitted the papers to the Intelligence Officer, Commercial Taxes, Mattancherry to hold an enquiry and pass appropriate orders.

7. After receipt of the notice of enquiry the petitioner had appeared before the enquiry officer and he had stated that he had placed orders for supply of ready-made garments telephonically through an agent to a consignor who is in Howarh at Calcutta. He had also stated that because of the inadvertence on the part of the consignor, the proof of the registration certificate of the dealer is not mentioned in the bill. Further he had also produced the records maintained by him in the regular course of his business, and in the books of account it was reflected that the supplies made by the consignor are taken into the books of account. Therefore, he had requested the enquiry officer to drop the proceedings, since there was no attempt to evade payment of tax due to the State.

8. The Intelligence Officer brushing aside the stand of the assessee, has proceeded to convert the security deposit offered by the petitioner into a penalty by his order dated March 30, 2005.

9. In the said order, the Intelligence Officer has stated as under:

I have verified the records. The vehicle intercepted at 2.45 AM at Ernakulam. The goods taken delivery from Railway Station, Ernaku-lam South. On verification of the bills accompanying the consignment the address was not of the dealer for Sangeetha Readymade, Kerala, Sangeetha (Babu) Readymade, Kerala, Sangeetha Readymades, Babu, Angamaly, etc. Hence it is presumed these bills are not the correct bills. On verification of the accounts it is seen that this is the first time the dealer transported the goods on Railway. This is suspicious. Hence it is presumed that the dealer did not account the goods transported through Railway and attempt of evasion of tax is proved.

10. A close reading of the orders passed by the Intelligence Officer would only show that he is suspecting the transaction only on the ground that the dealer for the first time has transported the goods on Railway. The reason so assigned by the Intelligence Officer can never be accepted by any court much less this court.

11. Sections 29(2) and 29A(2) of the KGST Act provide the documents that require to be carried by an owner, a person in-charge of the goods vehicle, etc. In the instant case, the goods were accompanied with relevant documents. But by sheer inadvertence the consignee''s registration number is not mentioned in the purchase invoices. That was explained by the assessee and the registration certificate was also produced before the Intelligence Officer when he made enquiries after the records were transmitted to him by the Intelligence Wing of the department.

12. Having gone through the omission pointed out by the Intelligence Officer while intercepting the goods while they were being transported, in our opinion, the presumption that the Intelligence Officer has drawn is one which cannot be accepted. This aspect of the matter should have been taken note of by the authorities under the Act as well as by the Tribunal.

13. The assessee being aggrieved by the order passed by the Intelligence Officer, Commercial Taxes, Mattancherry had questioned the same before the first appellate authority and in fact the first appellate authority after going through the explanation offered by the assessee and also verifying the books of account had given the relief to the assessee and this order of the first appellate authority is modified by the Tribunal at the instance of the Revenue.

14. Having gone through the notices issued by the Intelligence Officer of the department and orders passed by him u/s 29A(2) of the KGST Act and the orders passed by the Appellate Tribunal, we are of the opinion that the authorities are trying to levy penalty only on a technical breach said to have been committed by the petitioner. In our opinion, these orders cannot be sustained by us.

15. Accordingly, this revision petition requires to be allowed and it is allowed and the questions of law framed by the assessee are answered against the Revenue and in favour of the assessee. Ordered accordingly.