(2013) 06 KL CK 0046

In the High Court Of Kerala

Case No : W.P (C) No. 25376 of 2012

Sheen Golden Jewels (India) Pvt. Ltd. APPELLANT

Vs

Intelligence Officer RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)
Kerala General Sales Tax Act, 1963 — Section 28(6)
Kerala Value Added Tax Act, 2003 — Section 44(6), 67, 67(1), 68, 69

Citation : (2013) 3 ILR (Ker) 429 : (2013) 3 KHC 72 : (2013) 3 KLJ 369 : (2013) 3 KLT 215 : (2014) 69 VST 76

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : V.V. Asokan and V. Suresh Trivandrum, for the Appellant; T.K. Shaij Raj, Government Pleader, for the Respondent

Judgement

V. Chitambaresh, J.—How long can the accounts, registers, records or other documents seized under the provisions of the Kerala Value Added Tax Act, 2003 (''the Act'' for short) be retained by the officer seizing them ? I shall refer to the provisions of law first before adverting to the factual aspects in the peculiar circumstances of the case though it ought to be vice versa while pronouncing a judgment. Section 44(6) of the Act reads as under:--

44. Power to order production of accounts and powers of entry, inspection etc--

(1) xxxx

(2) xxxx

(3) xxxx

(4) xxxx

(5) xxxx

(6) The accounts, registers, records or other documents sized under sub-section

(5) shall not be retained by the officer seizing them beyond a period of one hundred and eighty days from the date of the seizure except with the permission of the next higher authority, unless they are required for any prosecution under this Act.

Provided that the next higher authority shall not give permission to retain such accounts, registers, records or other documents beyond a period of one year from the date of the seizure.

(emphasis supplied)

The decision as to whether the accounts, registers, records or other documents are required for any prosecution under the Act has necessarily to be arrived at by the officer within the period of one hundred and eighty days from the date of seizure. The officer should apply his mind and arrive at the decision that a prosecution should he launched against the dealer and that the retention of the documents is essential for the purpose. Otherwise the documents should be returned to the dealer by the officer if the permission of his next higher authority had not been obtained for its retention (who too cannot grant permission for a period beyond one year from the date of seizure). A prosecution which is still in contemplation without the officer arriving at a definite conclusion about its necessity within the period of one hundred and eighty days does not justify the retention of the documents seized.

2. I draw support from three decisions of this Court interpreting a similar provision contained in the Kerala General Sales Tax Act, 1963 and S. 28(6) thereof is identically worded to S. 44(6) of the Act The following are the decisions:

(i) M.C. Jacob v. Intelligence Officer, Agricultural Income Tax and Sales Tax, Ernakulam (1975 KLT 626 : (1976) 37 STC 14 (D.B.))

(ii) Sree Rajvel & Company v. State of Kerala and others ((1993) 88 STC 551)

(iii) Joseph Antony and Another Vs. Deputy Commissioner of Agricultural Income Tax and Sales Tax and Others, .

Mr. Justice P.A. Mohammed in the last of the decisions afore-quoted has highlighted the necessity to return the documents to the dealer without keeping him on tenterhooks and the following observations therein are apposite:

6. ...After seizing the documents the dealer shall not be kept in suspense without knowing as to what happened to the documents seized from him. Even though the seizure of documents is a reasonable restriction in the interest of general public, continued retention of the same by the officer without taking a decision for prosecution or obtaining permission from the next higher authority within the period of thirty days, cannot be said to be reasonable. The documents seized by the officer may be required by the dealer in the day-to-day business. Sometimes it is practically impossible for a dealer to arrange new account books in the place

of seized one, without adverting to the entries in the accounts seized by the officer. The documents seized by the officer sometimes may include cash book, ledger, way bill etc., which are ordinarily used for daily transactions. If the documents happen to be the regular accounts the dealer may face with serious impediments in carrying on daily business transactions. It can even amount to a restriction in the enjoyment of the dealer''s right guaranteed under Article 19(1)(g) of the Constitution.

3. The documents in the instant case (numbering about 23) including purchase bills, stock register, retail invoices etc., were seized from the business premises of the petitioner under Ext.P3 receipt dated 10.11.2011. The petitioner is a registered dealer under the Act engaged in the business of gold jewellery with the trade name ''Malabar Gold'' and the business premises was its branch at Pathanamthitta. The intelligence squad of the Department of Commercial Taxes also took physical stock of the jewellery available in the premises and prepared Ext.P2 Shop Inspection Report on the same day. Ext.P4 request dated 26.7.2012 was put in by the petitioner for the first time well beyond the period of 180 days for return of the documents retained by the Intelligence Officer. This was followed by repeated requests evidenced by Exts.P6 letter dated 22.8.2012 and Ext.P8 letter dated 6.9.2012 all of which met with evasive reply by the Intelligence Officer. The crux of the reply offered to the petitioner is that the documents retained would be required ''for taking prosecution proceedings under the Act'' about which the details were wholly absent.

4. There is of course a vague statement in the counter affidavit filed by the Intelligence Officer to the effect that ''the prosecution proceedings in the instant case were incepted on 16.11.2011''. I am at a loss to understand the meaning of the term ''incepted'' and the counter affidavit is conspicuously silent as to whether any decision to retain the documents seized was taken within a period of 180 days from the date of seizure. No details are forthcoming about the criminal prosecution launched-either the case number or the court in which it is pending--even during the hearing of the Writ Petition. I should note that more than 18 months (540 days) have now expired after the seizure of the documents and its retention by the Intelligence Officer without any demonstrable reason. It is however fairly conceded by Mr. V.V. Asokan, Advocate on behalf of the petitioner that a notice dated 7.3.2013 under S. 67(1) of the Act proposing to impose a penalty has been received. But the proceedings for the imposition of penalty under Sections 67, 68, 69 and 70 of the Act are altogether different from prosecution covered by Sections 71, 72 and 73 of the Act I cannot therefore agree with the contention of Mr. Shaij Raj. T.K., Government Pleader on behalf of the respondents that proceedings for penalty tantamount to proceedings for prosecution. The upshot of the above discussion is that the first respondent Intelligence Officer is liable to be directed by the issue of a writ of mandamus to return the documents seized under Ext.P3 receipt to the petitioner and I do so. The first respondent is at liberty to take extracts therefrom as may be considered necessary including its photocopy in the light of R.63(8) of the Kerala Value

Added Tax Rules, 2005. The documents shall be returned to the petitioner on proper acknowledgment which shall mention the details of the records returned after affixing signature or seal wherever required. The entire exercise shall be completed within a period of one month from the date of production of a copy of the judgment by the petitioner before the first respondent. Nothing said in this judgment will hamper the criminal prosecution if any launched by the respondents against the petitioner provided the same is otherwise lawful.

The Writ Petition is allowed. No costs.