
(1994) 05 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 17389 of 1993

Shyam Electricals

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-05-1994

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29A, 44, 44(1), 44(2), 44(3)

Citation : (1994) 05 KL CK 0010

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : N. Subramaniam, for the Appellant; T. Karunakaran Nambiar, Special Government Pleader, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—Heard Smt. S. Lalitha for the Petitioner and Sri T. Karunakaran Nambiar, Special Government Pleader (Taxes) for the Respondents.

2. Goods under transport to the Petitioner at Ernakulam by truck CTX 9037, were detained at the sales tax check-post at Vazhikkadavu on 1st November 1991 u/s 29A of the Kerala General Sales Tax Act, 1963 (the Act) on the ground that evasion of sales tax was suspected. Petitioner was directed to furnish security for double the amount of tax alleged to be attempt to be evaded as a condition for allowing onwards transport of the goods. Petitioner accordingly deposited Rs. 73,995 with the Check Post Inspector and the goods were released. A copy of the receipt evidencing deposit of Rs. 73,995 on 5th November 1991 is Ext. P-1. The enquiry based on the detention was subsequently held by the Sales Tax Officer (Enquiry) Palakkad, who by his proceedings Ext. P-2 accepted the explanation of the Petitioner for the alleged defect in documents .and held that there was no attempt at evasion of tax. He therefore passed the order Ext. P-2 on 30th April 1993 directing the amount of Rs. 73,995 to be refunded to the Petitioner. Unfortunately the refund was not made within any reasonable time. According, to the Petitioner the third any Respondent called the Petitioner to his office for collecting the refund voucher. Petitioner accordingly appeared in the office on

11th November 1993 when he signed the treasury chalan for having received the amount. But the refund order was not given, the third Respondent undertaking to send the refund order by post. This was despite the fact that the Petitioner had identified himself before the third Respondent by producing the driving licence. The Petitioner did not receive the refund order whereupon he issued a notice Ext. P-3 on 22nd November 1993 calling upon the Respondents to refund the amount forthwith with interest at 18 per cent per annum from the date of deposit namely 5th November 1991. The Petitioner, thereafter received a letter from the third Respondent dated 15th November 1993 informing him that as the amount due for refund exceeded Rs. 25,000 prior clearance and sanction was required from the Finance Department (Ways and Means II). A copy of the request made by the third Respondent to the Inspecting Assistant Commissioner for obtaining such sanction was also enclosed. Since the refund order was still not received this writ petition was filed on 17th December 1993 for direction to the Respondents to refund the amount.

3. The Statement filed on behalf of the Respondents states that the assessing authority received the files on 15th October 1993, that he traced out the payment chalan and prepared the refund voucher on 11th November 1993. But the refund voucher could not be issued to the Petitioner since formal sanction from the Finance Department had to be obtained for which purpose he has addressed the Inspecting Assistant Commissioner on 15th November 1993 requesting him to obtain the necessary clearance from the Finance Department. The assessing authority therefore denies any laches on his part in making the refund. What the Petitioner claims is a direction for refund together with interest at 18 per cent per annum. The amount was paid on 5th November 1991. The enquiry was completed and the direction for refund was made on 30th April 1993. The amount remained unrefunded despite the direction for refund and it is therefore that the Petitioner filed this writ petition for directing refund. Petitioner also claims interest.

4. The Respondents have no case that the amount is not liable to be refunded. In that case they should have granted refund without any further delay after 30th April 1993. That has not been done. There will therefore be a direction to Respondents 3 and 4 to refund the amount of Rs. 73,995 paid as per Ext. P-1 on 5th November 1991 forthwith to the Petitioner.

5. The Petitioner claims interest at 18 per cent on the amount of refund. The Government Pleader refuses the claim. According to him interest, if at all, should be granted only at 6 per cent per annum, as laid down in Section 44. But Section 44 has no application to the facts of this case, inasmuch as Sub-section (1) thereof deals with refund of tax paid in excess of what is due and Sub-section (2) deals with cases where a refund of tax or penalty becomes due consequent on an appellate or revisional order. Payment made in this case was not of tax falling under Sub-section (1); nor is the refund of any tax or penalty, nor is the refund occasioned! by any appellate or revisional order attracting Sub-section (2)

Sub-sections (3) and (4) of Section 44 deal only with cases covered by Sub-sections (1) and (2) in which event it is provided that if the refund is not made within 90 days of the date of final assessment or of the date of receipt of the order in appeal or revision, the dealer will be entitled to claim interest at the rate of 6 per cent per annum on the amount due to him. Since Section 44 has no application on its terms, to the Petitioner's case, the Petitioner's case has to be decided on general principles of law.

6. The amount of Rs. 73,995 was collected by way of security for release of the goods detained at the check-post. It has now been found that the Petitioner was not guilty of any attempt at evasion of tax and therefore the security got released and the amount became refundable to the Petitioner. That refund became due on 30th April 1993 itself. Even in the case of an order of assessment or other order which is set aside by any appellate or revisional authority, it has been held by this Court that amounts paid pursuant to the impugned proceedings were liable to be refunded once the appellate or revisional authority set aside that order *Rajagiri Rubber and Produce Co. Ltd. v. Additional Sales Tax Officer* 1993 K.D.T. 475. The position is all the more so in a case like this where the security gets released and the amount becomes co instanti refundable to the party. The State thereafter occupies the position of a debtor. If there is any unreasonable delay in making the refund, the State should pay interest on the amount, inasmuch as the State gets the benefit of retaining, the money for its own purposes during the period. As was held by the Supreme Court in *Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others*, , once it is established that an amount legally due to a party was not paid to him, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. That is the position here. No doubt a reasonable time should be allowed after 30th April 1993 for the order of the Sales Tax Officer (Enquiry) to reach the concerned authority for him to effect the refund. The fact that the records were sent to the Deputy Commissioner for his opinion and it reached the authority only on 15th October , 1993 as mentioned in the statement filed on behalf of the Respondents is no reason to delay the accrual of interest upto 15th October 1993. Only a reasonable time necessary for the papers to reach the authority concerned should be allowed and no more. The fact that administrative exigencies required the sanction of the Finance Department for effecting the refund is again not a ground for not granting interest inasmuch as the authorities should, when faced with situations like this, when they are in possession of money belonging to Assesseees, expedite matters so that the Assesseees get their refund without any delay. I should feel that one month's time is more than sufficient for the concerned authorities to effect the refund and that therefore interest on the amount covered by Ext. P-1 should run from 31st of May 1993 till the actual date of payment. Having regard to the prevailing rates of interest, I am of the opinion that the Respondents should pay interest at 15 per cent per annum till date of payment.

The Original Petition is therefore allowed. There will be a direction to

Respondents 3 and 4 to refund to the Petitioner expeditiously and at any rate within a period of one month from the date of receipt of a copy of this judgment the amount of Rs. 73,995 covered by Ext. P-1 with interest at 15 per cent per annum from 31st May 1993 till date of payment. If the amount has already been refunded, the amount of interest as mentioned above shall be paid to the Petitioner within the said period of one month.

There will be no order as to costs.