
(2003) 01 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 561 of 2003

Sreekrishna Marbles and Granites

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Kerala Tax on Entry of Goods into Local Areas Act, 1994 — Section 12, 4

Citation : (2003) 2 KLT 335

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : K.S. Hariharan and K.A. Manzoor Ali, for the Appellant; Sojan James, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner is challenging Ext.P4 notice issued by the Sales Tax Inspector, Sales Tax Checkpost, Walayar, demanding entry tax on marble slabs imported by the petitioner to Kerala from outside the State. The petitioner's case is that the petitioner is a registered dealer under the K.G.S.T. and C.S.T. Acts in Kerala and is liable to pay sales tax on the sale of marble brought by it on its sale, since "marble" is an item taxable under the First Schedule to the K.G.S.T. Act at the point of first sale in the State. According to the petitioner, the goods transported are covered by sale bill and other documents and the second respondent has no case to the contrary. The petitioner relies on Notification S.R.O. 590/96 by which the Government of Kerala has granted exemption from entry tax liability on goods brought by registered dealers on which they pay sales tax in Kerala. They have a further case that there is no proper assessment and demand of entry tax and the tax demanded by the second respondent vide Ext.P4 notice is arbitrary and untenable.

2. I have heard counsel for the petitioner and also the Government Pleader. Marble is an item coming under Entry 5 of the Schedule to the Kerala Tax on Entry of goods into Local Areas Act, hereinafter called the "Entry Tax Act".

Section 3 of the Entry Tax Act provides for levy of entry tax on goods covered by the Schedule to the Entry Tax Act if such goods are imported into the State "for consumption, use or sale therein". Section 3 which is relevant in this context is extracted for easy reference:

3. Levy of Tax :- (1) Subject to the provisions of this Act, tax shall be levied and collected a tax on the entry of any goods into any local area for consumption, use or sale therein. The tax shall be at such rate or rates as may be fixed, by the Government, by notification on the purchase value of the goods but not exceeding the rates specified for the goods in the first Schedule to the Kerala General Sales Tax Act.

Provided that no tax shall be levied and collected in respect of any motor vehicle which registered in any Union territory or any other State under the provisions of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) prior to a period of fifteen months or more from the date on which it is registered in the State:

Provided further that no tax shall be levied and collected in respect of any goods which is the property of the Central Government or which is used exclusively for purposes relating to the defence of India.

(2) The tax shall be payable by the importer in such manner and within such time as may be prescribed.

3. The contention of counsel for the petitioner that there was exemption from entry tax under S.R.O. 590/96 on dealers registered under the K.G.S.T. and C.S.T. Acts for goods brought to Kerala for resale by them is correct. However, the said notification is modified by S.R.O. No. 949/02 dated 21.11.2002 produced by the petitioner as Ext.P5 whereunder the earlier notification is modified withdrawing the exemption in respect of goods, namely, marble slabs, marble tiles, Cudappa stones and slabs, granite slabs and tiles and generators specified in the Schedule to the Entry Tax Act. In fact, it is specifically mentioned in Ext.P4 notice that the demand of entry tax is by virtue of withdrawal of exemption under S.R.O. 949/02 dated 21.11.2002. Since Ext.P4 is based on the amended notification, the petitioner is challenging the validity of Ext.P5 on the ground that the said notification is arbitrary and discriminatory and violative of Article 14 of the Constitution of India. I heard the Government Pleader who defended the action of the second respondent and contended that Ext.P5 notification is not discriminatory or arbitrary.

4. In the first place, the grievance of the petitioner against Ext.P4 is only temporary because by virtue of Section 4 of the Entry Tax Act, the payment of entry tax at the sales tax checkpoint partakes the character of payment of sales tax in advance. Admittedly, the petitioner is a registered dealer under the K.G.S.T. and C.S.T. Acts in Kerala and the item brought is for resale in Kerala, on which the petitioner is liable to pay sales tax on sale. The petitioner has also no dispute that the petitioner is not liable to pay sales tax on the item brought in respect of which entry tax is demanded under Ext.P4. Section 4 of the Entry Tax

Act in this connection is extracted hereunder for easy reference:

"4. Reduction in tax liability:- Where an importer of any goods liable to pay tax under this Act being a dealer in such goods becomes liable to pay tax under the Kerala General Sales Tax Act, 1963 (Act 15 of 1963) as a result of the sale of such goods, then the amount of tax payable under the said Act shall be reduced by the amount of the tax paid under this Act."

It is clear from the operation of Section 4 that once the item brought in respect of which entry tax is paid is said in Kerala, the dealer who is liable to pay sales tax need pay so much of the sales tax after reducing the entry tax paid on the very same item. In other words, the payment of entry tax goes to reduce the petitioner's sales tax liability to the extent of the amount of entry tax paid. The payment of sales tax is essentially governed by final determination in the form of assessment and entry tax paid goes only as a credit towards liability for sales tax or in other words, sales tax is demanded after reducing the entry tax paid by the petitioner. Therefore the entry tax collected at the checkpost is virtually in the form of advance payment of sales tax and there is no need to determine the entry tax liability in respect of goods brought by a registered dealer for resale in the State. Therefore petitioner cannot have a grievance against the extent of entry tax determined and collected at the checkpost or even on regular assessment if he demands such an assessment under the Entry Tax Act. In fact it will be a futile exercise to ask for assessment of entry tax which the petitioner is entitled to, if the petitioner has a dispute in regard to quantum of entry tax fixed at checkpost, because the liability though recovered as entry tax, goes to the credit of sales tax. Since the payment under the Entry Tax Act goes as a credit towards sales tax liability by virtue of the operation of Section 4 of the Entry Tax Act, excess payment if any made will be adjusted towards sales tax and balance if any will be refunded in sales tax assessment. However, this does not mean that the checkpost officials will be free to collect entry tax over and above what is payable under the Act. Rules 4 of the Entry Tax Rules provides for filing of returns, and assessment of entry tax by assessing officers in the case of registered dealers and in other cases by the Officer in charge of the checkpost. Therefore if any registered dealer importing goods wants to contest the demand of entry tax, he is free to file returns before the assessing officer and get an order of assessment and the demand of entry tax at the checkpost will be substituted by the demand of entry tax assessed by the officer. As already stated, since payment of entry tax at the checkpost by registered dealers takes the character of sales tax paid in advance no prudent business man liable to pay sales tax on same goods will agitate for an order of assessment demanding entry tax as the said order does not have any lasting adverse effect on the dealer. He need not raise any objection at all but to make payment, and take credit of the payment in the sales tax return filed by him. Though it is not very clear from Section 4 as to when the credit of entry tax is to be claimed by the registered dealer towards sales tax liability, I feel every Registered dealer paying entry tax is entitled to take credit of entry tax towards sales tax payable for the same class

of goods in the monthly returns filed after payment of such entry tax, though strictly the credit should be claimed only against sales tax liability of the very same goods on its sale. All what is stated u/s 4 is that "the amount of tax payable under the said Act (Kerala General Sales Tax Act) shall be reduced by the amount of tax paid under this Act (Entry Tax Act)." In other words, the amount paid under the Entry Tax Act will go to reduce the tax payable under the K.G.S.T. Act. Therefore there should be co-relation between the entry tax paid and sales tax payable for the very same goods. However, dealers in the very same class of goods are not expected to maintain separate stock register for each consignment received and therefore entry tax paid for any such goods can be taken credit in the monthly return filed following such payment against sales tax payable on the turnover of the very same class of goods. However, it is impermissible to claim credit of entry tax against sales tax payable for another class of goods; for example, a dealer paying entry tax on a consignment of marble can claim credit towards sales tax payable on the turnover of marble only and not against sales tax payable for any other class of goods, say, granite or ceramic tiles. Therefore, every dealer importing goods from outside Kerala on which entry tax is paid at the sales tax checkpost or at any other point in Kerala shall be entitled to take credit of such payment towards sales tax payable for same class of goods in the monthly returns filed in the following month. In view of this position, the payment of entry tax demanded on the basis of Ext.P4 notice is to be fully taken credit by the petitioner while paying sales tax on the turnover of marble or before 10th of the following month, and therefore the petitioner's grievance is limited to advance payment of sales tax in the form of entry tax in respect of the consignment. Therefore I do not think there is substantial grievance for the petitioner to challenge Ext.P4 because collection is in effect advance sales tax in the form of entry tax. As already stated the rebate provision u/s 4 of the Entry Tax Act transforms the entry tax payment into one of advance sales tax which directly goes to reduce the petitioner's liability under the Sales Tax Act. Therefore the grievance projected against demand of entry tax is unreal and non-existing.

5. The petitioner's next contention is against discrimination meted out to dealers of the items in respect of which exemption granted vide S.R.O. No. 590/96 was withdrawn vide S.R.O. No. 949/2002. Both the original notification and the partial withdrawal notification are issued u/s 12 of the Entry Tax Act, which gives power to the Government to grant exemption in public interest for any specified class of importers. Here again I do not find any substance in the petitioner's contention that exemption is withdrawn for the items referred to in S.R.O. 949/2002, while retaining the same for dealers in other items. Even under S.R.O. No. 949/2002 there is no levy of entry tax on the items mentioned therein because as already found the amount collected as entry tax partakes the character of advance sales tax by virtue of operation of Section 4 of the Entry Tax Act. Of course, there is discrimination in the case of importers of such goods to the extent of collection advance sales tax on the items brought by them in the

form of entry tax, while the other registered dealers in respect of other goods need not pay entry tax as they are exempt from paying the entry tax. There can be no doubt that the petitioner also ceases to have any liability for entry tax when such goods are sold in Kerala and in respect of which sales tax is paid after adjusting the payment of entry tax made. Therefore the limited grievance is advance collection of sales tax in the form of entry tax in respect of the commodities referred to in S.R.O. No. 949/02, while there is no need to collect advance sales tax in the form of entry tax in respect of other goods covered by the Schedule. What is referred to in Section 12 is exemption for specified class of importers which obviously can be class of persons dealing with specified class of goods. So far as items covered by S.R.O. No. 949/2002 such as marbles, granite, etc., constitute a separate class by themselves, there is no need for this Court to go into the rationale behind this classification. Basically I feel the purpose of collection of advance sales tax in the form of entry tax at the checkpoint serves to ensure accountability of goods by the person who brought it in the sales tax returns filed. Therefore the collection of entry tax at the checkpoint serves the purpose of ensuring accounting of goods under the K.G.S.T. Act by the person who brought it to Kerala for sale. A larger objective of check against evasion of tax is achieved by the Government by providing for collection of advance sales tax in the form of entry tax at checkpoint. Since there is a clear distinction between the class of goods on which entry tax is payable and other goods on which no entry tax is payable, under the above two notifications, I feel the petitioner cannot have any grievance because Section 12 itself provides for different treatment for different class of goods and dealers. As already stated, the impugned notification only advances the object of the Sales Tax Act by making the petitioner and similar dealers to account the goods brought to Kerala in their books of accounts to avoid evasion of sales tax in Kerala. Therefore the ultimate purpose of the notification serves this larger objective and I do not think that contention of the petitioner that the impugned notification is discriminatory, arbitrary and hence violative of Article 14 of the Constitution can be sustained.