

(2010) 02 KL CK 0091

In the High Court Of Kerala

Case No : Writ Petition (C) No. 9789 of 2009 and 3500 of 2010

ST. Mary's Hotels (P) Ltd.

APPELLANT

Vs

Intelligence Officer, Squad No. 1 and Others

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala General Sales Tax Act, 1963 — Section 28, 28(6)
Kerala Tax on Luxuries Act, 1976 — Section 13, 13(6)
Kerala Value Added Tax Act, 2003 — Section 44, 46(1), 67(1)

Citation : (2010) 36 VST 242

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : K.P. Dandapani and Millu Dandapani, for the Appellant; V.K. Shamsudheen, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—Both the writ petitions, filed by one and the same Petitioner involve rather similar issues, though in the subsequent writ petition, some additional grounds and reliefs have been incorporated, also producing same additional documents in support thereto. With the intention to enable the Petitioner to agitate the matter in a more efficacious manner, the earlier writ petition filed by the Petitioner (W.P. (C) No. 9789 of 2009) has been sought to be withdrawn by filing a memo dated January 31, 2010.

2. Obviously, in W.P. (C) No. 3500 of 2010, the steps taken by the Respondents, particularly the fifth Respondent, who was the first Respondent in the earlier writ petition and the consequential proceedings have been subjected to challenge, contending that the documents seized from the Petitioner were not returned and hence that the Petitioner was virtually prevented from submitting any effective reply to the show-cause notice issued to the Petitioner. It is also contended that most of the copies of the documents served to the Petitioner are not legible and hence that interference of the court is very much necessary.

3. When the W.P. (C) No. 9789 of 2009 came up for consideration before the court on April 2, 2009, it was admitted and an interim order was passed granting one month's time to the Petitioner to file objection to the show-cause notice, simultaneously permitting the authorities concerned to proceed with the matter and to finalise the proceedings by passing appropriate orders thereon, after considering the objections and also after giving an opportunity of hearing. It was also observed that the order, so to be passed, if detrimental to the Petitioner, would not be implemented for a period of "two weeks" (presumably to enable the Petitioner to challenge the same by way of appropriate proceedings before the appropriate authority). As per the very same interim order, the Petitioner was permitted to file an application before the first Respondent within one week, producing "such copies" as are stated to be not legible, upon which the "legible copies" were directed to be served to the Petitioner, before the case was taken up for final hearing. A true copy of the said order is produced as exhibit P16 in W.P. (C) No. 3500 of 2010. This means, the entire proceedings including the subsequent developments can be considered in W.P. (C) No. 3500 of 2010 (particularly after passing exhibit P16 interim order by this Court on April 2, 2009). In view of the memo filed by the Petitioner in W.P. (C) No. 9789 of 2009 seeking permission to withdraw the said case, with liberty to move the subsequent writ petition, permission is granted and W.P. (C) No. 9789 of 2009 is dismissed as withdrawn.

4. Coming to the sequence of events as described in W.P. (C) No. 3500 of 2010, it is revealed that, on November 29, 2007, the Respondents conducted a surprise inspection leading to issuance of exhibit P2 series of "shop inspection reports". Various documents were also seized from the premises of the Petitioner by issuing exhibit P3 receipt. Subsequently, the Petitioner filed exhibit P4 representation to return the documents, which however was not acceded to by the fifth Respondent, who issued exhibit P5 asking the Petitioner to produce all the relevant books of account. Subsequently, exhibits P6, P7 and P8 series notices were issued by the fifth Respondent proposing to impose penalty under the KGST Act, KVAT Act and Kerala Taxes on Luxuries Act, followed by a series of correspondence and communications between the Petitioner and the fifth Respondent. It was during the pendency of the said proceedings that the Petitioner approached this Court by filing W.P. (C) No. 9789 of 2009 challenging the proceedings and seeking to return the original documents seized from the Petitioner. By virtue of the interim order passed by this Court, as borne by exhibit P16, the concerned authority was permitted to proceed with further steps and to pass appropriate orders, as aforesaid.

5. It is revealed that, subsequent to the said interim order, the fifth Respondent considered the facts and figures and passed exhibits P24 and P25 series final orders, confirming the penalty as proposed. Aggrieved by the impugned orders passed by the fifth Respondent, the Petitioner took up the matter by filing appeals before the seventh Respondent, the competent authority in this regard. Exhibit P26 series and exhibit P27 series appeals were also accompanied by

exhibit P29 series petitions to condone the delay and exhibit P30 series petitions for granting interim stay. In the meanwhile, recovery notices were issued invoking the machinery under the Kerala Revenue Recovery Act, as borne by exhibit P32, aggrieved of which, the Petitioner has now approached this Court by filing W.P. (C) No. 3500 of 2010 seeking to intercept the said proceedings, among other reliefs.

6. Sri. K.P. Dandapani, the learned senior counsel appearing for the Petitioner, submits that the course and conduct being pursued by the fifth Respondent is very much vindictive and only to harass the Petitioner. The learned senior counsel further submits that, even the shop inspection and the reports as borne by exhibit P2 series, were without complying with the statutory requirements, particularly Section 44 of the KVAT Act, Section 28 of the KGST Act and Section 13 of the Kerala Taxes on Luxuries Act. It is also the argument of the learned senior counsel that the concerned Respondents have not given effect to the direction given by this Court as per exhibit P16 interim order, so as to supply "legible copies" of the relevant documents. It is further stated that the authorities concerned have retained the original documents of the Petitioner, absolutely without any authority of law and that the retention of the documents has seriously affected the rights and interests of the Petitioner quite adversely.

7. Referring to Section 28(6) of the KGST Act and the "proviso" thereunder, the learned senior counsel submits that the Respondents could have retained the documents seized, only for a period of "30" days; unless the time was extended by the Deputy Commissioner or that the documents were required for prosecution. The "proviso" to Section 28(6) stipulates that the Deputy Commissioner could extend the time by a further period of "60" days. Similar provisions are also stated as existing u/s 46(1) of the KVAT Act and u/s 13(6) of the Kerala Taxes on Luxuries Act as well. Reliance is also placed on the decisions rendered by this Court in *Sree Rajvel and Co. v. State of Kerala* (1993) 88 STC 551 and *Joseph Antony v. Deputy Commissioner of Agricultural Income Tax and Sales Tax* (1994) 95 STC 146; (1994) 2 KLT 452.

8. It is borne out by the records produced by the Petitioner, particularly exhibit P49, that the time has very much been extended by the Deputy Commissioner (third Respondent before this Court), This being the position reliance is placed on the decisions cited supra, with reference to Section 28(6) of the KGST Act and the "proviso" thereunder and similar provisions of the other statutes do not hold good.

9. The learned senior counsel with reference to the "proviso" to Section 67(1)(i) submits that the penalty proceedings have to be finalized within a period of "one" year, in the manner as provided thereunder. The date of inspection in the premises as borne by exhibits P2 series "SI Rs" being November 29, 2007, the impugned orders (exhibit P24 series and P25 series) passed in June and July 2009 are stated as barred by limitation. The learned Government Pleader appearing on behalf of the Respondents, with specific reference to the

amendment brought about by virtue of the Finance Act 2009, submits that the period stipulated under the above "proviso", has been raised from one year to "three years" with effect from April 1, 2005. This by itself shows, that three years" period will expire only in the year 2010 and not any time before and hence the plea raised with reference to the bar of limitation is not at all attracted. That apart, it is settled law that the limitation starts only from the date of detection of offence and not from the date of inspection by the authorities concerned, it is only after verification of the books and accounts, in the light of the incriminating circumstances brought out in the course of inspection, that the offence, if any, can be detected. In any view of the matter, because of the amendment to the statute as referred to above, the case of the Petitioner comes within the statutory limit and as such, no further enquiry is necessitated to ascertain the facts and figures in this regard.

10. Coming to the maintainability of the writ petition, it is very much obvious from exhibit P16 order passed by this Court earlier (in W.P. (C) No. 9789 of 2009) that the fifth Respondent was very much permitted by this Court to proceed with the steps for finalizing the proceedings in response to exhibits P6, P7 and P8 series of notices. It was also made clear that the order so to be passed by the concerned Respondent, was to be kept in abeyance for a period of "two weeks" (presumably for enabling the Petitioner to challenge the same, if aggrieved). Accordingly, exhibits P23/ exhibit P24/P25 series orders were passed by the said authority; which in turn have been challenged by the Petitioner by approaching the appellate authority, i.e., the seventh Respondent, by filing exhibits P26/P27/P28 series proceedings, along with P29 and exhibit P30 petitions for stay and it was thereafter, that the Petitioner filed the present writ petition, seeking to have the matter considered and adjudicated by this Court. As he has already availed the statutory remedy, this Court does not propose to go into the merits, exercising the discretionary jurisdiction under Article 226 of the Constitution of India and finds that the matter requires to be considered and finalised by the appellate authority. The Petitioner is very much at liberty to raise all the contentions including those projected in this writ petition. Accordingly, interference is declined in the writ petition.

11. It is noted that the original documents seized from the premises of the Petitioner "s establishment, pursuant to exhibit P2 series shop inspection reports and exhibit P3 receipt, are still in the hands of the fifth Respondent; despite the lapse of nearly "three" years. It is also brought to the notice of this Court, with reference to the questionnaire submitted by the Petitioner invoking the provisions under the Right to Information Act and the answers given, that the Department has not taken any prosecution steps so far. However, the learned Government Pleader submits that the issuance of exhibit P1 does not mean that the Department has decided not to pursue any prosecution steps at all, more so when the relevant provision does not place any bar in resorting to such prosecution proceedings. However, considering the fact that the Department is yet to finalise whether any prosecution steps have to be taken or not, the

Department shall consider and finalise the same as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment and the seized records/documents shall be returned to the Petitioner, subject to the decision to be taken as above.

12. Considering the persuasive submissions made by the senior counsel and also taking note of the turn of events right from 2007, the next question to be considered is whether the recovery steps being pursued against the Petitioner pursuant to exhibit P3 should be intercepted or not. Obviously, the matter is pending consideration in appeals filed before the seventh Respondent. The Petitioner has also filed petitions to condone the delay in filing the appeals and necessary I. As for stay as well. In the said circumstances, the seventh Respondent is directed to consider and pass appropriate orders, on exhibit P29 series of petitions to condone the delay in filing exhibits P26/P27/P28 appeals and also in exhibits P29 and P30 petitions for stay in accordance with law. Appropriate orders shall be passed thereon, after giving an opportunity of hearing to the Petitioner, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment. However, it is made clear that till such appropriate orders are passed on exhibits P29 and P30 series petitions for stay, all further proceedings pursuant to exhibit P32 shall be kept in abeyance.

13. With regard to the alleged non-compliance with exhibit P16 direction to provide "legible copies" of the relevant documents, it is brought to the notice of this Court by the learned Government Pleader with specific reference to exhibit P23(b) order (at page 254) that, despite exhibit P16 order passed by this Court, the Petitioner has not approached the fifth Respondent. The relevant portion of the said order is extracted hereunder:

All the copies of the records seized including the sales report were issued to the dealer on request by January 20, 2009. Even at the time of filing this reply they are with the dealer. The honourable High Court of Kerala in W.P. (C) No. 9789 of 2009 directed the dealer to produce all illegible copies if any, before the undersigned and collect clear copies of such records. But the dealer never did approach this office with such a request although it was their main grievance in the writ filed.

14. With reference to the said observation, the learned Government Pleader submits that absolutely no prejudice whatsoever has been caused to the Petitioner and that the contentions to the contrary raised in the writ petition are absolutely without any merit or bona fides. this Court finds considerable force in the said submission, in view of the unrebutted facts. Even otherwise, the Petitioner has not approached this Court after passing exhibit P16 order in W.P. (C) No. 9789 of 2009, with any such grievance, stating that the direction given by this Court has not been properly complied with. Accordingly, no interference does require on this score as well.

15. The writ petition fails and it is disposed of as above.