(2009) 01 KL CK 0053

In the High Court Of Kerala

Case No : S.T. Rev. No. 172 of 2006

State of Kerala APPELLANT

Vs

K.M. Abdul Gafoor RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29A(4)

Citation : (2010) 28 VST 187

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : Tekchand, Government Pleader, for the Appellant; T.M. Sreedharan, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The revision is filed by the State against the order of the Sales Tax Appellate Tribunal cancelling penalty levied on the respondent u/s 29A(4) of the Kerala General Sales Tax Act for attempted evasion of tax in respect of a consignment of high speed diesel (12,000 litres). A penalty is levied based on detection of goods at Thalassery without proper documents. Even though the assessee later produced documents before the authorities, the same was rejected and penalty was levied. In fact, penalty originally levied was sustained in first appeal and also in second appeal before the Tribunal. However, when the matter was taken up in revision before this Court, this Court set aside the order of the Tribunal and remanded the matter back to the Tribunal. After remand, the Tribunal cancelled the penalty accepting the respondent''s explanation. We have heard the Government Pleader for the petitioner and counsel appearing for the respondent.

2. The Government Pleader pointed out that the goods were accounted by the respondent after it was detected and therefore, accounting of goods and production of documents after detection of offence is not a ground for exemption from penalty. The transaction is inter-State purchase of diesel by the respondent who is a retail dealer in Mahi from Hindustan Petroleum Corporation in Elathur

which is south of Mahi to Mahi which is part of the Union Territory of Pondicherry. The goods admittedly reached at the entry check-post, namely, Azhiyoor Chungam Check-post at 12.12 p.m. on October 17, 1990. In fact, Mahi has only one squire kilometre area and the goods which entered in Mahi should have been unloaded in the petrol bunk which is probably a few hundred metres away from the check-post. However, the truck with the goods was seen taken out and found at Thalassery which is beyond Mahi at 11.30 in the night on the same date. Obviously the respondent took the goods outside Mahi for sale there. In fact, in very many cases reaching this Court we have noticed that Mahi is used as a safe pocket for evasion of sales tax due in Kerala. Mahi has an area of around one squire kilometre and has a population of around 30,000 people. It has large number of liquor shops, petrol bunks, etc., serving itself as a haven for tax evasion. Unfortunately the Governmental authorities in Pondicherry facilitate tax evasion in Kerala and increase tax collection in the Union Territory by granting sales tax Registration to all and liberally supplying C Forms and other documents to the dealers in Mahi for helping accounting of purchase and sale of goods in Mahi which really do not take place there. In fact, we have pronounced several judgments touching upon the scheme of tax evasion practised by dealers in several items in Mahi. The respondent''s explanation for taking out the tanker lorry with full load of diesel outside Mahi is that it had developed a valve problem and therefore, with the load of goods it was taken to Thalassery. In the first place, a valve problem is so silly a matter which requires the attention of a small time mechanic to correct it. Secondly, till 11.30 in the night the respondent could not correct the problem even at Thalassery. Lastly, the respondent has no explanation as to why the goods were not accounted in Mahi and then taken outside with separate sales tax document prescribed under the sales tax rules of Pondicherry because the respondent had authority to transport the goods under cover of documents supplied by the seller only up to Mahi. The facts and circumstances clearly establish that the respondent''s effort was to sell the goods in Kerala outside Mahi, i.e., in Thalassery or nearby areas leading to eight per cent gain on tax which is substantial. Therefore, this is a case of clear attempt of evasion of tax and the respondent cannot claim exemption from penalty by accounting the goods after fraud was detected by the Department. Even though counsel for the respondent has relied on judgment of the Supreme Court in the respondent''s own case in Civil Appeal Nos. 6298-6299 of 2002, we find that facts in that case have no relation to the facts in this case. The scheme of evasion of tax tried is clear by looking at the place to which consignment was made, the time and the place at which goods are later detected. These are matters which are not seen considered in the judgment of the Supreme Court. We, therefore, do not find any application of judgment of the Supreme Court on the facts of this case. We, therefore, allow the revision by reversing the order of the Tribunal and restoring the penalty.