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(1995) 12 SC CK 0050

In the Supreme Court Of India

Case No : Civil Appeal No''s. ... of 1995 Arising out of SLP (C) No''s. 9685-87 of 1991

State of Kerala APPELLANT

Vs

Surface Coats, Neelimangalam RESPONDENT

Date of Decision : 06-12-1995

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 45A(1), 45A(1)(D)

Citation : (1998) 7 JT 612 : (1996) 2 KLT 832 : (1998) 9 SCC 356

Hon'ble Judges : S. B. Majmudar, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Heard the counsel for both the parties.

2. Leave granted.

3. These appeals are preferred against the judgment of a Division Bench of the Kerala High Court allowing the appeals preferred by the respondent and deleting the penalty levied upon it. The respondent filed returns for three assessment years, namely 1983-84, 1984-85 and 1985-86. In these returns, the respondent disclosed certain turnover, but claimed that the entire turnover was exempt from tax on the ground that the products were of an industry which were exempted from sales tax by a government order. In support of the said returns, the respondent produced a certificate issued by the District Industries center, Kottayam, dated 27-10-1986 granting sales tax exemption for the said three years. On the basis of the said certificate, the sales tax officer granted exemption to the extent of ninety per cent of the turnover. Subsequently, however, it appeal's to have come to the knowledge of the authorities that the said certificate dated 27-10-1986 was a false and forged one. Accordingly, proceedings were taken u/s 45-A(1)(d) against the respondent. After hearing the respondent, penalties were levied. When the matter came to the High Court, the High Court allowed the appeals on the following ground: the charge against the

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assessee was one of filing "untrue or incorrect return" within the meaning of Section 45-A(1)(d) of the Act and not that he tried to substantiate his returns by producing a false certificate; the said false certificate was not filed along with the return but much later, i.e., about a year later, and that, therefore, the levy of penalty u/s 45-A(1)(d) is unsustainable in law. So far as the reasoning of the High Court, as contained in the order under appeal is concerned, we find it difficult to agree with it. In the returns filed by the respondent, it claimed a total exemption of its turnover from the levy of sales tax on the ground that the same is exempted by virtue of a government order. It is only in support of the said plea that it purported to obtain and file a certificate which was found to be forged. In the circumstances, it must necessarily follow that the returns filed were indeed untrue and incorrect. The claim for exemption was undoubtedly a false one, i.e., an untrue and incorrect one. The fact that the certificate in support of the said plea was filed later does in no way detract from the fact that the returns filed were untrue and incorrect. In any event, it makes no difference whether the forged certificate was filed along with the returns or at a later point of time.

4. At this stage, the learned counsel for the respondent brought to our notice the order of the Deputy Commissioner of Agricultural Income Tax and Sales Tax, Kottayam, dated 22-3-1989, which refers to yet another certificate dated 8-3-1989 produced by the respondent which, according to him, was issued by the Industries Department, whereunder the respondent-firm was said to be eligible for sales tax exemption for Rs 3,05,939 for the period 10-6-1982 to 9-6-1987. The contention of the learned counsel for the respondent is that this is a genuine certificate and that the one filed earlier, namely certificate dated 27-10-1986, which is found to be a forged one, was obtained by its employee without the knowledge of the respondent. The submission is that the respondent is indeed entitled to sales tax exemption and he should not be penalised for the unauthorised act of his employee. In the judgment of the High Court, however, there is no reference to this certificate. Indeed, the learned counsel for the appellant points out that even in the order of the Board dated 26-2-1990, there is no reference to this certificate.

5. Since the matter pertains to penalty and the offence, if proved, is undoubtedly a serious one, we think it appropriate that the aspect now brought to our notice be looked into and pronounced upon. Accordingly, we allow these appeals, set aside the judgment of the High Court and remit the matter to the High Court for a fresh disposal according to law. The High Court may also examine whether the certificate dated 8-3-1989 referred to in the order of the Deputy Commissioner afore-mentioned was indeed filed before the authorities and whether it is true and genuine and its effect.

6. There will be no order as to costs.

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