(1964) 02 KL CK 0009

In the High Court Of Kerala

Case No : Criminal R.P. No. 407 of 1963

Swami Sachitanand APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 21-02-1964

Acts Referred:
General Sales Tax Act, 1125 — Section 19(b)

Citation : (1964) KLJ 360 : (1964) 15 STC 495

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; State Prosecutor, for the Respondent

Judgement

Govinda Menon, J.—The petitioner K. B. Prabhu alias Swami Sachitanand has been convicted for an offence u/s 19(b) of the General Sales Tax Act, 1125-shortly stated as the Act-for failure to pay the balance of sales tax due for the year 1956-57 and he has been sentenced to pay a fine of Rs. 75. The accused has also been ordered to pay Rs. 1,815-84 nP. being the arrears of sales tax. P-W. 1 is the Sales Tax Officer, Badagara. He has deposed that Shrishaila Industrial and Spiritual Colony Charities, Kadalur-hereinafter referred to as the charities-is the assessee. That society was assessed to pay sales tax of Rs. 2,580-12 nP., and the balance amount due on 8th March, 1958, was Rs. 1,836-26 nP. Exhibit P. 1 is the assessment order. P-W. 2 the peon served the demand notice on one Ramadas for and on behalf of the charities. As the amount was not paid, the accused who is said to be a quondam member of the charities was prosecuted. The accused contended that he was not the registered dealer nor the assessee, that he is not a defaulter and as such no prosecution can be launched against him. Learned First Class Magistrate, Quilandy, negatived the contention and convicted the accused. Aggrieved with the order the petitioner has come up in revision.

2. Section 2(d) of the Act defines "dealer":

''Dealer'' means any person who carries on the business of buying or selling goods, and includes a person who sells goods produced by him by manufacture, agriculture or otherwise.

Explanation-A co-operative society, a club, a firm or any association which sells goods to its members is a dealer within the meaning of this Clause.

Section 3(1) is the charging section and it says that every dealer shall pay for each year a tax on his total turnover for each year, that the tax shall be calculated at the rates specified in column (3) of Schedule 1 and that the tax for each year may be assessed, levied and collected in advance during the year. Section 10 requires every dealer whose turnover in any year is not less than Rs. 7,500 to get himself registered under the Act. Section 12 deals with the procedure to be followed by the assessing authority. It requires a dealer to submit a return relating to his turnover. If the assessing authority is satisfied that the return is correct he shall assess the dealer on that basis. If no return is submitted or the return submitted by him appears to be incorrect or incomplete the assessing authority shall assess the dealer to the best of his judgment. Section 13 provides that the tax assessed under the Act shall be paid in such manner and in such installments and within such time as may be specified in the notice of assessment. Rule 13 requires the assessing authority to issue to the dealer a notice in the prescribed form and Rule 45 says as to how notice should be served. Section 19 of the Act is the penal Section. Section 19(b) says that any person who fails to pay within the time allowed any tax assessed on him or any fee due from him under this Act, shall on conviction by a Magistrate of the First Class be liable to a fine and in case of a conviction the Magistrate shall specify in the order the tax which the person convicted has failed or evaded to pay and the tax so specified shall be recoverable as if it were a fine under the Code of Criminal Procedure.

3. So any person who has been assessed to pay sales tax and who fails to pay the same within the time allowed is guilty of the offence. The prosecution has admitted in this case that the petitioner is not a registered dealer or an assessee under the Act, that the assessee in this case is the charities and that no notice has been taken to the petitioner. If that is so the accused cannot be found guilty for an offence u/s 19(b). It is only if any tax had been assessed on him and he fails to pay that he becomes a defaulter. Again there must be failure to pay within the time. In the absence of a valid notice on the petitioner no question of failure to pay within the time allowed would arise. Proper service of notice not having been effected on the petitioner and such service being the foundation for any penal action it follows that the prosecution has to fail.

4. The essential ingredients of the offence have been lost sight of by the learned Magistrate. The question is not whether the petitioner had anything to do with the charities. Reference has been made to an appeal filed by the petitioner on behalf of the charities, but this is also of no significance and it will not make the petitioner an assessee under the Act. The charities is a separate legal entity and

even if the accused had anything to do with the charities at some time it would not make him liable for the tax due by the charities.

5. The conviction and sentence passed on the petitioner-accused are set aside and he is acquitted. Fine, if paid, would be refunded.