(2010) 10 KL CK 0267

In the High Court Of Kerala

Case No : S.T.A. No. 2 of 2010

Terumo Penpol Limited — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 11-10-2010

Acts Referred:
Central Sales Tax Act, 1956 — Section 8(2)(b)

Citation : (2011) 42 VST 147

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : T.V. Lakshmanan, Saritha David Chunkath and Smitha George, for the Appellant; Mohammed Rafeeq, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether the Commissioner of Commercial Taxes was justified in holding that the

Appellant is liable to pay interest on belated payment of Central sales tax for the assessment year 2000-01. We have heard counsel appearing for

the Appellant and the Government Pleader for the Respondent.

2. The facts are admitted inasmuch as the Appellant though made inter-State sale declaring turnover at concessional rate on condition of

production of C forms, C forms were never produced leading to assessment at full rate in terms of Section 8(2)(b) of the Central Sales Tax Act,

1956. The Appellant has no dispute with regard to higher amount of tax assessed over the tax returned and paid by the Appellant. However, the

dispute is limited to the interest demanded for belated payment of balance demand of Central sales tax. The assessing officer was of the view that

interest is payable u/s 9(2B) of the CST Act and accordingly interest was levied on the remaining unpaid tax for the period during which tax

remained unpaid. In the first revision the Deputy Commissioner following certain decisions of this Court allowed the revision. However, the

Commissioner noticed that later decisions of this Court justified levy of interest for belated payment of tax. Accordingly, the first revisional order

was vacated by the Commissioner in exercise of suo motu revisional power and interest levied was restored. This appeal is filed against the order

of the Commissioner restoring levy of interest.

3. The Appellant''s contention is that since CST Rules provide for filing of C forms later, the Division Bench decision of this Court relied on by the

Commissioner does not apply at all. Section 9(2B) of the CST Act under which interest is demanded is as follows:

9. Levy and collection of tax and penalties.- (1)

(2B) If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax and

all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment

of tax and assessment and collection of interest for delayed payment of tax, of the general sales tax law of each State, shall apply in relation to due

date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this

Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such sales tax law.

4. It is to be noted that prior to introduction of Section 9(2B) by the Finance Act, 2000, Sub-section (2A) was introduced to Section 9 of the

CST Act by Act 103 of 1976 making the provisions of local Sales Tax Act of the State in respect of levy of interest and penalties applicable to the

CST Act. It is to be noted that judgments relied on by the Appellant have been superseded not only by statutory amendment but also by two

judgments of this Court, particularly the Full Bench judgment of this Court in State of Kerala Vs. Western India Cosmetic and Health Products

Ltd., , wherein the Division Bench judgment relied on by the Deputy Commissioner stood overruled. In fact the Division Bench judgment of this

Court in Chandramani Traders v. State of Kerala (2008) 16 VST 294; (2008) 16 KTR 527 , also squarely applies to the Appellant''s case inasmuch as the Appellant is not entitled to concessional rate claimed in the monthly returns because of non-production of C forms even later. In

our view, payment of tax at concessional rate at four per cent along with monthly returns is on the specific premise that the Appellant will produce

C forms later or will pay differential tax with interest. The stand taken by the Appellant is that since there is time to produce C forms, such time

available for production of C forms will be available for payment of balance tax without interest. However, Section 9(2B) read with Section

23(3A) of the KGST Act provides for payment of interest for any delay in payment of tax. Therefore irrespective of circumstances that led to

delay in payment of tax, interest is payable at the rate prescribed in the statute. We notice that by virtue of Section 9(2B), Section 23(3A) of the

KGST Act is made applicable for the purpose of levy and collection of interest for belated payment of Central sales tax. We have in the Full

Bench judgment considered in detail the scope of Section 23(3A) of the KGST Act. Even though counsel for the Appellant relied on two decisions

of the Supreme Court in Babu Khan and Others Vs. Nazim Khan (dead) by Lrs. and Others, and Bihar School Examination Board Vs. Suresh

Prasad Sinha, , we do not find that those decisions have any application to the facts of this case, and the issue is covered by the Full Bench

decision of this Court above referred. Therefore following the Full Bench decision of this Court above referred and earlier Division Bench decision

of this Court in Chandramani Traders'' case (2008) 16 VST 294; (2008) 16 KTR 527, we uphold the order of the Commissioner and dismiss the

sales tax appeal.

