

(2002) 10 KL CK 0078
In the High Court Of Kerala
Case No : O.P. No. 35916 of 2000A

Vision Communications

APPELLANT

Vs

Intelligence Officer, Squad No. IV and Another

RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17(3), 47, 47(1)

Citation : (2006) 143 STC 241

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Latha, K, for the Appellant; Sojan James, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner is stated to be a registered dealer, but the Sales Tax Officer before whom the petitioner is registered is not made a party in the original petition. The petitioner is challenging two orders issued u/s 47 of the Kerala General Sales Tax Act, 1963 accepting composition of offence for which the petitioner would have otherwise faced prosecution. The petitioner is not questioning the orders granting composition, but is questioning the composition fee collected by the department for both the years 1999-2000 and 2000-2001 at the rate of Rs. 1 lakh each.

2. I heard counsel for the petitioner and the Government Pleader. While counsel for the petitioner submitted that the petitioner is engaged only in works contract, the tax liability is not determined in assessment and the first respondent has in the proceedings arbitrarily fixed the compounding fee at Rs. 1 lakh each against which the petitioner has no relief by way of appeal or revision. In the circumstances, the petitioner approached this Court for cancellation or at least reduction of compounding fee. The Government Pleader on the other hand submitted that the petitioner is not engaged in works contract and was engaged in sale of dish antenna parts and the same is admitted by the petitioner in the course of inspection in the petitioner's shop conducted on August 3, 2000. It is

seen from the counter-affidavit that the petitioner made two separate applications on August 8, 2000 and September 4, 2000 agreeing to compound the offence for both the years admitting compounding fee at Rs. 1 lakh each. According to counsel for the petitioner, the assessment is not completed and the determination of tax in the course of compounding proceeding is not conclusive or binding on the petitioner. It is not known why assessment is not so far taken up and why tax was not collected along with compounding fee. Section 47 of the Act provides for collection of tax sought to be evaded and equal amount towards compounding fee subject to the maximum of Rs. 1 lakh during the relevant time which is now increased to Rs. 5 lakhs. Therefore, the short question is whether the demand of compounding fee without exactly determining the tax liability is justified or not. Ofcourse in principle if tax sought to be evaded itself is found to be at or above the maximum compounding fee provided under the Act, then ofcourse the maximum compounding fee can be recovered leaving assessment to be done by the assessing authority. In the counter-affidavit it is stated that the tax sought to be evaded by the petitioner was estimated at Rs. 2,03,028 for the year 1999-2000 and Rs. 96,450 for 2000-2001. According to the petitioner, the tax amount determined in the penalty proceeding is not correct. However, the details are furnished in the counter stating the date gathered on inspection and the admission by the petitioner.

3. Section 47(1)(a) provides for collection of evaded tax and equal amount towards compounding fee subject to a maximum compounding fee which at the relevant time was Rs. 1 lakh. Since the petitioner is a registered dealer and the assessments are not taken up, it is for the assessing officer to make assessment after issuing notice to the petitioner in terms of Section 17(3) of the Act. The officer will thereafter compare the turnover and tax returned by the petitioner at the time of inspection and see whether there was evasion of tax at the time of inspection and if so to what extent. For this purpose the petitioner will produce a copy of this judgment before the assessing officer as well as before the first respondent. The first respondent shall forward the intelligence file to the assessing officer before whom the petitioner is registered and the petitioner will co operate in the assessments by producing documents and books of accounts before the assessing officer. The assessing officer shall complete the assessments for both years within a period of three months from the date of receipt of a copy of this judgment, which will be produced by the petitioner along with a copy of the original petition and the counter-affidavit filed in the case. The assessing officer will after completion of the assessments, verify the tax sought to be evaded by the petitioner with reference to the tax paid along with the returns till the date of inspection and if the tax evaded till then is less than Rs. 1 lakh, he will refund the excess compounding fee collected over the tax for both the years. If the tax sought to be evaded as on the date of inspection is higher than the compounding fee, then ofcourse no modification is called for as maximum compounding fee is already charged.

4. Though the petitioner has filed a petition for amendment and the same is

allowed, there is no need for this Court to go into the petitioner's claim for assessment as works contract because this is a matter which the assessing officer will have to consider with reference to the admission made by the petitioner in the compounding application and also the nature of transactions proved by the petitioner.

The original petition is disposed of as above.

Order on C.M.P. No. 61216 of 2000 in O.P. No. 35916 of 2000 dismissed.