

(1996) 08 KL CK 0024
In the High Court Of Kerala
Case No : T.R.C. No. 69 of 1996

V.V. Agencies

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-08-1996

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29A, 29A(2), 29A(4)

Citation : (1997) 1 ILR (Ker) 86 : (2003) 129 STC 56

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : Arikkat Vijayan Menon, for the Appellant; V.C. James, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.A. Mohammed, J.—The subject of this tax revision case is the levy of penalty u/s 29A of the Kerala General Sales Tax Act, 1963 (for short, "the Act").

2. The petitioner is a partnership firm dealing in purchase and sale of soaps and soap products manufactured by Tata Oil Mills Limited. It is a registered dealer on the files of the Sales Tax Officer, Alathur. By annexure B proceeding of the Sales Tax Officer, II Circle, Palakkad, security deposit of Rs. 3,837 was realised from the petitioner as penalty for attempting to evade payment of tax u/s 29A of the Act. The case of the respondent is that the petitioner had transported the goods covered by the sale bills Nos. 810 and 811 dated December 7, 1990 to Trichur and the vehicle was intercepted by the Sales Tax Inspector, II Circle, Palakkad on suspected evasion of tax. It was after the enquiry conducted u/s 29A(4) the Additional Sales Tax Officer, II Circle, Palakkad imposed the said penalty. As against the levy of penalty u/s 29A(4) the petitioner filed an appeal before the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, Palakkad, but in vain. Thereafter, the petitioner filed a further appeal before the Sales Tax Appellate Tribunal. The Appellate Tribunal by order dated August 24, 1995 confirmed the levy of penalty and dismissed the appeal. It is against the

said order the present tax revision case has been filed u/s 41 of the Act.

3. Heard learned counsel appearing for the petitioner and also the Government Pleader who appeared on receiving notice.

4. The sole question that requires to be decided in this case is whether the levy of penalty u/s 29A(4) of the Act is justified ? When the petitioner transported the goods covered by sale bill Nos. 810 and 811 dated December 7, 1990 the vehicle was intercepted by the Sales Tax Inspector alleging evasion of tax. In support of the transport of the goods the aforesaid sale bills were produced. According to the Inspector the above sale bills do not contain address of the consignee and therefore he formed an opinion that the petitioner attempted to evade payment of tax. Further transport of the goods was allowed on payment of cash security of Rs. 3,837 being double the amount of tax sought to be evaded. Thereafter in view of the provisions contained in Section 29A of the Act an enquiry was conducted and in the enquiry it was found that the article was addressed to Apsara Stores. However, the address of the consignee was not available in the copy of the sale bill and therefore the enquiry officer came to the conclusion that the attempt was to help the consignee to escape from turnover tax. In view of the aforesaid conclusion the enquiry officer ordered to realize the aforesaid security amount as penalty payable for the evasion of tax by the petitioner. The case of the petitioner is that during the enquiry a certificate evidenced by annexure A issued by the partner of Apsara Stores has been produced to the effect that they have purchased soaps and detergent powders from the petitioner on December 7, 1990 covered by two sale bills Nos. 810 and 811 for an amount of Rs. 29,117.86. It is further stated in the certificate that the above purchase has been accounted by them as cash purchase made on December 7, 1990. During the enquiry the petitioner has also produced sale bills issued by Tata Oil Mills Limited, Ernakulam to prove that these commodities have suffered tax as it being the first seller within the State. There is no dispute in this case that the sale effected by the petitioner to Apsara Stores is the second sale and therefore no levy of tax is attracted in so far as the sales covered by the aforesaid bills. However, the aforesaid two documents said to have been produced by the petitioner during the enquiry have not been adverted to by the enquiry officer. Whatever that be, the case of the enquiry officer is that the petitioner has attempted to help the consignee in evading the turnover tax.

5. The proceedings were initiated by the Sales Tax Inspector, II Circle, Palakkad u/s 29A of the Act. Section 29A authorises detention of the goods under transport if the officer has reason to suspect that the goods under transport are not covered by proper and genuine documents or that any person transporting the goods is attempting to evade payment of tax due under the Act. But the officer is authorised to detain the goods for reasons to be recorded in writing. The "reasons to be recorded" must definitely relate to the person transporting the goods. The "reasons" envisaged under the section are not mere suspicions. They must relate to any one of the two requirements" contained in Sub-section

(2) of section 29A. Those requirements are : (1) The goods under transport are not covered by proper and genuine documents, and (2) the person transporting the goods is attempting to evade payment of the tax. If there are reasons for satisfaction of any one of the above two requirements, the officer can detain the goods. After detention and collection of security amount the officer authorised in that behalf shall conduct an enquiry u/s 29A(4) of the Act.

6. Section 29A(4) is thus :

"(4) The officer authorised under Sub-section (3) shall, before conducting the inquiry, serve notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods a penalty not exceeding twice the amount of tax attempted to be evaded, as may be estimated by such officer."

The levy of penalty under Sub-section (4) is authorised when there has been an attempt to evade payment of tax under the Act. This is an indispensable requirement for levying penalty under Sub-section (4) of Section 29A. From a combined reading of Section 29A(2) and Section 29A(4) we can very well see markable difference between these provisions. u/s 29A(2) the officer is authorised to detain the goods after satisfying that the documents accompanying the transport are incorrect and incomplete or there is an attempt to evade payment of tax by the person who transports the goods, whereas under Sub-section (4) of section 29A levy of penalty is authorized only on proof that there has been an attempt to evade payment of tax. In other words, even though the officer is authorized to detain the goods on satisfying that the document accompanying the transport is not correct and complete, the levy of penalty under Sub-section (4) can be imposed only on finding that there has been an attempt to evade payment of tax due under the Act. This would indicate that the "attempt" should not be ipse dixit of the office. It must be a conscious and definite attempt to evade payment of tax.

7. The question that is required to be examined therefore is whether there was a conscious and definite attempt to evade payment of tax. What is available in this case is that the documents accompanying the transport do not contain all the particulars, that is to say, the full address of the consignee is not available. Further, it is the admitted case that the goods under transport is taxable at the first point of sale. That means, it is not taxable at the point of second sale within the State. From the records produced in this case it is evident that in respect of the goods under transport tax was paid by Tata Oil Mills Limited and this fact is sufficiently proved by the assessment order passed in the case of the assessee evidenced by annexure D. That assessment order sufficiently reveals that the petitioner was dealing in second sales of scheduled goods. The case of the enquiry officer is that there was an attempt to help the consignee from payment of turnover tax. Inasmuch as it is sufficiently proved that the goods under transport are taxable on the first point of sale and it has thus already suffered

tax it is difficult for this Court to say that there is an attempt to evade payment of tax much less conscious or definite. Therefore, we are not satisfied that this is a fit case where levy of penalty u/s 29A(4) is attracted. That being the position, we set aside the orders of the authorities below and allow this tax revision case. The penalty collected from the petitioner shall be refunded within a period of one month from the date of receipt of a copy of this judgment.

Order on C.M.P. No. 2539 of 1996 in T.R.C. No. 69 of 1996 allowed.