(2009) 01 KL CK 0046

In the High Court Of Kerala

Case No : W.A. No. 922 of 2006

Western Industries APPELLANT

Vs

The Deputy Tahsildar and Others RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 23, 23(1), 23(3), 24, 45A

Citation : (2009) 1 KLJ 402

Hon'ble Judges : J.B. Koshy, Acting C.J.;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : K.B. Muhamed Kutty and Firoz K.M, for the Appellant; Muhammed Rafiq, G.P., for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, A.C.J.

1. The only dispute in this writ appeal is whether interest can be demanded for the delay in paying the penalty ordered under the provisions of the Kerala General Sales Tax Act, 1963 (''the Act'' for short). Interest is charged u/s 23(3) of the Act which reads as follows:

23. Payment and recovery of tax:- xx xx

(3) If the tax or any other amount assessed or due under this Act is not paid by any dealer or other person within the time prescribed therefor, in this Act or in any rule made thereunder and in other cases within the time specified therefore in the notice of demand, the dealer or other person shall pay, by way of interest, in the manner prescribed, in addition to the amount due, a sum equal to,-

(a) one per cent of such amount for each month or part thereof for the first three months after the date specified for its payment;

(b) two per cent of such amount for each month or part thereof subsequent to the first three months aforesaid.

[Explanation:- Where the period of default is less than one month, interest shall be calculated for the actual number of days of default].

2. It is the contention of the appellant that only when tax, additional tax or any other similar amount is demanded, interest is chargeable. We are unable to agree with the above submission because it is specifically stated that if tax or any other amount is assessed or due, is not paid, interest is payable at the rate prescribed under the Section. Further Section 23(1) of the Act shows that taxes and penalties are to be recovered by using the same method. Therein also tax assessed or any other amount demanded is mentioned. Section 23(1) of the Act reads as follows:

(1) The tax assessed or any other amount demanded under this Act shall be paid in such manner and in such instalments, if any, and within such time, as may be specified in the notice of demand, not being less than twenty one days from the date of service of the notice. If default is in paying according to the notice of demand, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or other amount under this Act:

Provided that the time limit of twenty one days for a notice under this sub-section shall not apply to casual traders.

3. Then we come to Section 24 of the Act, which reads as follows:

24. Recovery of penalty:- Penalty payable under this Act shall be deemed to be tax under this Act for the purpose of collection and recovery and shall be recoverable without prejudice to the institution of any proceeding for an offence under this Act.

There is a specific provision in Section 24 of the Act which says that penalty payable shall be deemed to be tax for the purpose of collection and recovery. Section 23 of the act deals with how tax is to be collected and if there is delay what is the rate of interest to be charged, etc. Section 45A of the Act is the provision enabling imposition of penalty. A reading of the above Section would show that penalty is also payable on the date fixed for payment. Therefore, if it is not paid accordingly, interest is payable as provided u/s 23(3). It is true that the petitioner has paid the penalty amount when recovery proceedings were taken. Automatically, for the delay in payment, interest is payable.

4. It is contended by the learned Counsel for the appellant that in Form 24 wherein penalty is demanded, there is no separate column for demanding interest. But, later this Form itself was amended and now there is a specific column demanding interest. Merely because the Form does not contain a column, one cannot say that interest is not payable, because only if default is committed in payment of the penalty as per the demand, the question of demanding interest would arise. The date when penalty was due to be paid, the date when it was actually paid, etc. are all undisputed in the appeal. Therefore, there cannot

be any dispute regarding the amount of interest due u/s 23(3). The contention of the appellant that no interest can be levied for the delay in payment of penalty amount cannot be accepted. The learned Judge has granted reliefs to the appellant in the impugned judgment even beyond the limits prescribed under the statutory provisions. In the above circumstances, we see no ground to interfere with the impugned judgment at the instance of the appellant.

5. The writ appeal is dismissed.

Consequently, I.A. No. 634 of 2006 stands closed.