(2007) 03 KL CK 0068

In the High Court Of Kerala

Case No : W.A. No. 2220 of 2006

Yogesh Trading Co. APPELLANT

Vs

Intelligence Officer (IB) and Others RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 45A

Citation : (2007) 03 KL CK 0068

Hon'ble Judges : K.S. Radhakrishnan, Acting C.J.;M.N. Krishnan, J

Bench : Division Bench

Advocate : Arikkat Vijayan Menon, for the Appellant; Government Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, Acting C.J.

1. Writ petition was preferred by the appellant seeking a writ of certiorari to quash Exts.P17 to P21 orders passed by the first respondent, Ext.P24 order passed by the second respondent and Ext.P25 order passed by the third respondent and also for consequential reliefs.

2. We heard learned Senior counsel Sri. Aryama Sundaram for the appellant and also Sri V.V. Asokan, learned Special Government Pleader (Taxes), at some length.

3. Learned Counsel for the appellant submitted that all the authorities have not properly examined the scope of Section 45A of the Kerala General Sales Tax Act in imposing penalty. Counsel further referred to various decisions of this Court in support of his contention and submitted that the initial burden is on the department to discharge. Counsel also submitted that the Intelligence Officer has passed Exts.P17 to P21 on mere conjunctures and surmises on irrelevant materials. Counsel further submitted that there is nothing to show that the assessee had transported rubber from Kerala to Karike in the State of Karnataka. In the absence of any material, counsel submitted that there is no justification in

proceeding against the assessee and imposing penalty u/s 45A of the KGST Act. Counsel further submitted that the second respondent first revisional authority has committed an error in placing reliance on various materials which do not find a place in the show cause notice.

4. Learned Special Government Pleader (Taxes) Mr. V.V. Asokan submitted that the department has already examined the matter and found on materials that the rubber was transported by the assessee to Karnataka and sold those items from the branch office at Karike. The learned Special Government Pleader also submitted though in Ext.P11 letter dated 28th July, 2004 the assessee has stated that it has purchased rubber from various dealers from Karnataka, the same were not disclosed, though the petitioner has expressed its willingness to furnish those details. As the assessee has volunteered to furnish the names of persons/ dealers from whom they had purchased rubber at Karike it is the duty of the assessee to convince the Intelligence Officer that the rubber sold from Karike were purchased from registered dealers. Unless and until the Intelligence Officer has sufficient materials, no proceedings could be initiated against the assessee. We are also unhappy in the manner in which the second respondent first revisional authority has passed his orders. The revisional authority is not expected to place reliance on materials which were never put to the assessee. Considering the entire facts and circumstances of the case, we feel it will be appropriate that the matter be considered by the Intelligence Officer afresh after affording an opportunity of hearing to the assessee and also to produce all relevant materials before the Intelligence Officer. The materials on which the assessing authority proposes to rely on may also be made available to the assessee. In order to enable the Intelligence Officer to pass fresh orders we set aside Exts.P17 to P21 as well as the revisional orders Exts.P24 and P25. We make it clear that we have not expressed any final opinion on the merits of the case either way. Since we are remitting the matter back to the Intelligence Officer, we leave open the various contentions raised by counsel on either side in respect of their respective cases.

Writ appeal is disposed of setting aside the judgment of the learned Single Judge as well as the orders impugned.

