

Danesh Kumar Gupta Vs. The Assistant Commissioner, Spl.Circle I

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Court : Kerala

Decided On : Dec-20-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : Danesh Kumar Gupta

Respondent : The Assistant Commissioner, Spl.Circle I

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR SATURDAY, THE 20TH DAY OF DECEMBER 2014 29TH AGRAHAYANA, 1936 WP(C).NO. 28437 OF 2010(D) ----- PETITIONER(S): ----- DANESH KUMAR GUPTA: PROPRIETOR JAYA MEDICALS: CALICUT. BY ADVS. SRI.K.I.MAYANKUTTY MATHER SRI.ASOKAN, SR. SRI.R.JAIKRISHNA RESPONDENT(S): ----- THE ASSISTANT COMMISSIONER, COMMERCIAL TAXES: SPECIAL CIRCLE I: CALICUT - 673 006. BY ADV. GOVERNMENT PLEADER SMT.LILLY.K.T THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 2012-2014, ALONG WITH WPC. 29621/2010, WPC. 29632/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).NO. 28437 OF 2010(D) APPENDIX PETITIONER'S EXHIBITS: EXT.P1: PHOTOCOPY OF ASSESSMENT

ORDER

FOR 199394 [KGST] DT.20.02.1998 EXT.P2: PHOTOCOPY OF ASSESSMENT

ORDER

FOR199394 [CST] DT.20.02.1998 EXT.P3: PHOTOCOPY OF

ORDER

OF STAT, CALICUT IN TA NO.102/05 DATED1711.2006 EXT.P4: PHOTOCOPY OF

ORDER

OF STAT, CALICUT IN RA NO.8/07 DATED1608.2007 EXT.P5: PHOTOCOPY OF

JUDGMENT

IN ST REV.NO.343/2008 DATED2010.2009 EXT.P6: NOTICE DATED1903.2010 CALLING FOR PRODUCTION OF ACCOUNTS FOR199394 EXT.P7: PRE-ASSESSMENT NOTICE DT.02.08.2010 FOR199394 [KGST] EXT.P8: INTERIM REPLY DATED1808.2010 FILED ON EXT.P7 EXT.P9: PHOTOCOPY OF ASSESSMENT

ORDER

FOR199394 DATED2608.2010 RESPONDENTS' EXHIBITS: NIL //TRUE COPY// P A TO JUDGE A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C).Nos.28437, 29632 & 29621 of 2010 Dated this the 20th day of December, 2014

JUDGMENT

Since the issue involved in all the three writ petitions are similar, they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to the facts and Exhibits is from W.P.(C).No.28437 of 2010.

2. The petitioner in writ petition W.P.(C).No.28437 of 2010 is the proprietor of M/s.Jaya Medicals. The said proprietorship firm was earlier a partnership firm till

31.03.1991. The firm comprised of the petitioner and his two brothers, who are the petitioners in W.P.(C).No.29621 of 2010 and W.P.(C).No.29632 of 2010. It is stated that Sri.Bharath Bhooshan Aggarwal, retired from the partnership on 31.03.1990 and, thereafter, a formal partition was entered into among the three brothers, which ultimately resulted in the firm Jaya Medicals coming into the hands of Danesh Kumar Gupta the petitioner in W.P.(C).No.28437 of 2010. Accordingly, the petitioner became the sole proprietor of the firm with effect from 01.04.1991. The issue in the writ petition pertains to the CST W.P.(C).Nos.28437, 29632 & 29621 of 2010 2 assessments in respect of the firm for the assessment year 1993-1994. It is the case of the petitioner that the firm had dispatched sandal wood oil for consignment sales to M/s.S.S Perfumers, Kanpur as per 12 invoices, and that the said consignment sales were declared in the returns filed for the year 1993-1994. It would appear that pursuant to an interstate investigation done by the sales tax authorities, the assessment under the Kerala General Sales Tax Act (hereinafter referred to as 'the KGST ACT' for short) and Central Sales Tax Act (hereinafter referred to as 'the CST ACT' for short) for the year 1993-1994 came to be re-opened and the CST assessment for the year 1993-1994 was completed afresh by estimating the turnover of sales of sandal wood oil and also estimating purchase turnover of sandal wood oil from which, according to the department, sandal wood oil was extracted by the petitioners for subsequent sale. The sales tax department therefore, while completing the KGST assessment, also subjected the alleged purchase turnover of sandal wood to tax under Section 5A of the KGST Act. In an appeal preferred by the petitioners against the KGST Act and CST Act, the appellate tribunal set aside the demand of Tax under Section 5 A on the petitioners and remanded the matter to the lower authorities to ascertain as to whether the business was carried on during the relevant W.P.(C).Nos.28437, 29632 & 29621 of 2010 3 assessment year by a proprietorship concern or a partnership firm. Pursuant to the directions of the Appellate Tribunal, the CST assessment that was completed on the petitioners was set aside by the Deputy Commissioner. The State Government, however, preferred a revision against the orders of the Tribunal holding the demand under Section 5A to be unsustainable and remanding the CST assessments to the Deputy Commissioner. By Ext.P5 judgment dated 20.10.2009 in STRV.Nos.324 of 2006, 267 of 2007 and 343 of

2008, a Division Bench of this Court, while upholding the findings of the Tribunal setting aside the demand under Section 5A of the KGST Act, found as follows with regard to the estimation done with regard to the turnover of the petitioner firm for the purposes of the CST assessments: "6. The issue raised in S.T.Rev.No.343 of 2008 is whether the Tribunal was justified in review proceedings to allow the respondent's appeals by deleting the addition except in regard to the turnover covered by 14 invoices. Special Government Pleader has referred to the finding in the assessment order, which shows that the respondent has accounted up to 102 bills and the sales under later bill numbers are accounted earlier and previous bill numbers are accounted later. It is seen that the respondent has mainly claimed stock transfer of goods and conceded no interstate sales turnover for the year 1993-94. However, in the course of investigation, the Department collected information that the transaction accounted is really interstate sales and not stock transfer as claimed by the respondent. W.P.(C).Nos.28437, 29632 & 29621 of 2010 4 Strangely, the respondent has accepted the assessment under the CST Act which means that their accounts or returns are incorrect. The Department got information about sales under the cover of two invoices for total value of Rs.29,65,600/- made in U.P., which was supplied by the Trade Tax Officer, Lucknow. After finding that the respondent was engaged in unaccounted purchase and sales and was in fact accounting bogus purchases, the assessing officer estimated interstate sales turnover by making addition to the disclosed turnover covered by 14 invoices referred in the assessment order. The basis of estimation is that Bills up to No.102, were raised by the respondent up to 21.2.1994 and therefore, the officer took average value of the proved invoices and made estimate for the suppressed sales. However, when the matter went up before the Tribunal, the Tribunal in review proceedings deleted the additions and held that only the actual suppression found, i.e., the amount covered by 14 invoices, could be assessed to tax. We find force in the contention of the Department that the Tribunal's order is, in effect, a direction to accept books of account of a dealer, who was admittedly engaged in bogus and clandestine transactions. We are of the view that the Tribunal's order is absolutely arbitrary and untenable. As already stated, the dealer, which has not conceded any interstate sales turnover, has now accepted the interstate sales of above Rs.2 lakhs covered by 14 invoices. We are

of the view that the assessing officer is entitled to estimate the turnover on a rational basis based on the number of transactions, invoices etc. Senior Counsel appearing for the respondent contended that the Department has not supplied details of the particulars collected by them in the course of investigation and the assessment should have been made only after giving copies of the documents relied on by the Department. The Special Government Pleader W.P.(C).Nos.28437, 29632 & 29621 of 2010 5 submits that much of the documents referred to are the documents viz., invoices raised by the respondent themselves and therefore, copies are already with the respondent. However, it is seen that the Department has collected information from the sales tax authorities in U.P and have conducted investigation. In the circumstances, we feel, the assessing officer is bound to supply all documents relied on by him for making assessment. We, therefore, allow the revision filed by the State for the year 1993-94 by vacating the orders of the Tribunal and that of the appellate authorities and remand the matter to the assessing officer for making fresh assessment. We specifically vacate the finding of the Tribunal that the question whether the assessee was carrying on business as proprietor or partnership firm should be found out from the names shown in the invoices because the assessee's documents are proved to be made up for his own purposes and is not issued in accordance with the provisions of the K.G.S.T.Act and Rules. Since we have vacated the orders of the Tribunal, none of the finding of the Tribunal should inhibit the officer from giving his own findings based on the evidence collected. The assessing officer is directed to complete the assessment for the year 1993-94 after proper enquiry and after giving adequate opportunity to the respondent within a period of three months from the date of receipt of a copy of this judgment. We make it clear that the assessment under Section 5A should be made only if there is sufficient material collected by the Department and that too after giving copies of the data collected by the Department and after giving opportunities to the assessee to defend the case." Pursuant to Ext.P5 judgment of this Court, the Assessing Officer issued Ext.P7 notice dated 02.08.2010 to the petitioners. In the W.P.(C).Nos.28437, 29632 & 29621 of 2010 6 said notice reference is made to 12 invoices, copies of which were enclosed along with the notice. A perusal of the notice does not show, however, that any other document other than the 12

invoices was enclosed with the notice that was served on the petitioners. The petitioners therefore preferred Ext.P8 reply dated 18.08.2010 seeking copies of invoice Nos.33 dated 09.04.1993 and invoice No. 102 dated 21.02.1994, which were relied upon by the respondent for the purposes of estimating the turnover for the SCT assessments, and also copies of the documents that were collected from the sales tax authorities in Uttar Pradesh, pursuant to the investigation done in Uttar Pradesh, all of which was directed to be given to the petitioners by Ext.P5 judgment of this Court. In Ext.P9 assessment order dated 26.08.2010, that was subsequently passed by the respondent, while it is seen that the proposal to levy purchase tax under Section 5A on the petitioner firm has been dropped, the estimation done with regard to the inter-state sales turnover for the purposes of CST assessments is seen to have been mechanically confirmed once again by the respondent. It is under these circumstances that, in the writ petition, Ext.P9 order is sought to be impugned by the petitioners.

3. A counter affidavit has been filed on behalf of the W.P.(C).Nos.28437, 29632 & 29621 of 2010 wherein it is stated that the estimation of the inter State sales turnover was done based on the details ascertained from the 12 invoices that were obtained from the petitioners, as also two other invoices which the respondents obtained from S.S.Perfumers, Kanpoor. It is also pointed out that the estimation was done on the basis of information obtained by the department from the sales tax authorities in Kanpur, as also on the basis of the letter stated to have been issued by Danesh Kumar Gupta during the course of investigation by the respondent. It is the specific case of the respondent that, in the absence of production of the books of accounts by the petitioners, despite repeated notices to them, the respondent had no other option but to resort to a best judgment assessment, based on the material obtained during the course of investigation.

4. I have heard Sri.Asokan, the learned Senior counsel as well as Sri.Harisankar Menon, the learned counsel for the petitioners in all the writ petitions as well as the learned Government Pleader Smt.K.T.Lilly on behalf of the respondent in all the writ petitions. 5. On a consideration of the facts and circumstances of the case also the submissions made across the Bar, I am of the view W.P.(C).Nos.28437, 29632 & 29621 of 2010 that the writ petitions, in their challenge against the order

dated 26.08.2010 of the respondent in Assessment No.33131720/93-94 (revised), must necessarily succeed. A perusal of the said order would clearly indicate that, despite the specific directions in Ext.P5 judgment, as already extracted above, the respondent had not furnished to the petitioners, copies of the following documents which were directed to be issued to them prior to a completion of the assessment proceedings for the year 1993-1994:

1. Copies of the Invoice No.33 dated 09.04.1993 and Invoice No.102 dated 21.02.1994 issued to S.S.Perfumers, Kanpur.

2. Copies of the documents collected from the Trade Tax Officer Lucknow, U.P, that were relied upon for the purposes of estimating the sales turnover of the petitioner for the assessment year 1993-1994.

3. Copy of the letter filed by Sri.Danesh Kumar Gupta before the investigating authority, which is referred to in the notice dated 13.01.1998 W.P.(C).Nos.28437, 29632 & 29621 of 2010 9 issued by the respondent to the petitioner under Section 17(3) of the KGST ACT. In my opinion, it was incumbent upon the respondent to furnish the aforesaid documents to the petitioners and invite their objections, if any, to the proposals of the respondent to do an estimation based on the said documents, before proceeding to finalise the CST assessment for the assessment year 1993-1994. In as much as this exercise has not been done by the respondent, I quash Ext.P9 order and dispose the writ petition with the following directions:

1. The respondent shall draw up a proposal stating the basis of the estimation that is proposed against the petitioner, making reference therein to the documents on which he relies in support of the said estimation. This shall be done within a period of three weeks from the date of receipt of a copy of this judgment.

2. The petitioners shall present themselves before the respondent, at his office in Calicut, at W.P.(C).Nos.28437, 29632 & 29621 of 2010 10 11.am on 21.01.2015, on which date the respondent shall serve a copy of the proposal together with the aforementioned documents on the petitioners.

3. The petitioners shall thereafter file their objections, if any, to the proposals on or before 04.02.2015.

4. The respondent shall thereafter, proceed to pass assessment orders afresh in respect of the CST assessment for 1993-1994, within a period of two weeks thereafter, after hearing the petitioner. The writ petitions are disposed of as above.

A.K.JAYASANKARAN NAMBIAR JUDGE mns W.P.(C).Nos.28437, 29632 & 29621 of 2010 11

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