

**Assistant Commissioner (Assessment) Vs. Grasim Industries Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/718117](http://sooperkanoon.com/718117)

**Court :** Kerala

**Decided On :** Jan-24-2006

**Reported in :** 2006(1)KLT821

**Judge :** K.S. Radhakrishnan, Ag. C.J. and; K.T. Sankaran, J.

**Acts :** Bombay Sales Tax Act, 1946 - Sections 6(3) and 12A(3); Karnataka Sales Tax Act - Sections 12(3); Kerala General Sales Tax Act, 1963 - Sections 17, 17(6), 17A and 18; Kerala General Sales Tax Rules, 1963 - Rules 32, 32(2) and 32(21); Central Sales Tax Rules - Rule 6(5); Bombay Sales Tax Act, 1946 - Rules 26 and 41A; Karnataka Sales Tax Rules, 1957 - Rule 26(10); [Constitution of India](#) - Article 226

**Appeal No. :** W.A. No. 1876 of 2005

**Appellant :** Assistant Commissioner (Assessment)

**Respondent :** Grasim Industries Ltd.

**Advocate for Def. :** P.K. Kurian, Sr. Adv.,; Anil D. Nair,; Antony Dominic

**Advocate for Pet/Ap. :** Raju Joseph, Special Government Pleader (Taxes)

**Disposition :** Appeal allowed

**Judgement :**

K.S. Radhakrishnan, Ag. C.J.

1. This appeal has been preferred by the State of Kerala and the Assistant Commissioner (Appeals), Department of Commercial Taxes, aggrieved by some of the observations of the learned single Judge, especially with regard to the interpretation of Rule 32(21) of the Kerala General Sales Tax Rules and also with regard to the finding of the learned single Judge that respondent has no obligation to produce accounts after the expiry of four years of the assessment year to which it relates.

2. Original Petition was preferred by the respondent herein seeking a writ of certiorari to quash Exts.P1 to P14 notices in Form No. 50 calling upon the respondent to produce books of accounts for the year 1979-80 to 1992-93. Notices were challenged on the ground that respondent is bound to maintain books of accounts only for a period of four years after the assessment year. It was pointed out that Exts.P1 to P14 notices were issued beyond the period stipulated in Rule 32 and the respondent is not bound to produce the books of accounts as directed in Exts. P1 to P14. It was also pointed out that Section 17(6) stipulates that any assessment under this Section shall be completed within a period of four years from the expiry of the year to which the assessment relates. Reference was also made to the decision in *Geo Sea Foods v. Additional Sales Tax Officer* 119 STC 237 and submitted that pending assessments are to be completed within a reasonable time. Applying the same principle, according to the respondent, Exts. P1 to P14 notices are also liable to be quashed. Reference was also made to Section 17A of the Act and submitted that Exts. P1 to P14 would not fall under that Section as well. Further it is also pointed that though respondent had filed O.P.No. 2805 of 1996 this Court had granted stay only against the assessment of stock transfer between two divisions of the company and there was no bar in completing the remaining part of the assessment for the years 1979-80 to 1992-93.

3. Detailed counter affidavit has been filed in the Original Petition. It was pointed out that as per Sub-rule (2) of Rule 32, every dealer liable to get himself registered under the Act, shall keep and maintain the books of accounts disclosing true and complete accounts with all vouchers, weigh bills and delivery notes relating to the stocks, delivery, purchases, out put and sales shall be preserved by the assessee for a period of four years after the close of the year to which they relate to or from

the disposal of the appeal or revision arising out of such assessment or from the date of completion of any other proceeding under the Act connected with such assessment or appeal or revision, whichever is later and shall be kept at the place of business mentioned in the certificate of registration. Further it was pointed out that the respondent cannot take shelter under Rule 32 as the assessing authority was prevented from making any assessments from 1979-80 onwards in view of the stay order obtained by the respondent in O.P.No. 2805 of 1996. Further as per Section 17A of the Act all assessments upto 1992-93 are kept alive and hence Exts. P1 to P14 notices are not hit by the law of limitation.

4. Learned Special Government Pleader for Taxes Sri Raju Joseph submitted that learned single Judge has completely misunderstood the scope of Rule 32 of the Kerala General Salestax Rules. Counsel submitted that the finding of the learned single Judge that the respondent has no obligation to produce books of accounts after the period of four years after the close of the year to which they relate is illegal and unsustainable in law. Counsel submitted that the mandate of Rule 32(21) is not that the assesses shall not keep the books of accounts beyond four years after the close of the year to which they relate. Counsel submitted if no accounts are produced the assessing authority can proceed with the assessment and complete the assessment on the best of judgment basis on available records. Further counsel submitted that assessee had approached this Court in O.P. No 2805 of 1996 and obtained stay of assessment of stock transfer between the two divisions of the company which in effect stood in the way of the authorities completing the assessment. Counsel submitted that in any view as per Section 17A of the Act all assessments prior to the assessment year 1.4.1993 were kept alive and there was no inhibition under the Act to complete the assessment.

5. Senior Counsel Sri P.K. Kurien on the other hand submitted that respondent is not obliged to keep the books of accounts for four years after the assessment years and hence Exts. P1 to P14 notices are liable to be quashed since they are beyond the scope of Rule 32 of the Kerala General Sales Tax Rules. Counsel submitted in any view of the matter, authorities could have completed the assessment and the stay obtained by the assessee in O.P. No. 2805 of 1996 was restricted only against the stock transfer between two divisions of the respondent

company for the year 1979-80 and for other assessment years, which according to the counsel never stood in the way of the assessing authority in completing the assessment.

6. Learned single Judge referred to Rule 32 and took the view that if the four year period prescribed in the rule is already over by the time the substitution was made on 7.11.1994 by SRO 1514/94 the assessing authority has no jurisdiction to call upon the assessee to produce the books of accounts in respect of those assessment years. Learned single Judge further observed that if four year period was not over as on 7.11.1994 then such cases would be governed by the amended provision.

7. We are of the view, learned single Judge has completely misunderstood the scope and ambit of Rule 32(21) of the Kerala General Salestax Rules, 1963. Before we examine the scope of the above mentioned rule, which stood at the relevant point of time and also the present rule, it is useful to extract the same for easy reference.

Rule 21 as it stood at the relevant point of time.

(21) Accounts maintained by dealer together with all vouchers, bills, declarations, way bills, and delivery notes relating to stocks, deliveries, purchases, output and sales shall be preserved by them for a period of four years after the close for the year to which they relate and shall be kept at the place of business mentioned in the certificate of registration.

Rule 21 as it stands at present.

(21) Accounts maintained by dealer together with all vouchers, bills, declarations, way bills and delivery notes relating to stocks, deliveries, purchases, output and sales shall be preserved by them for a period of two years from the date of completion of the final assessment of the year to which they relate or from the date of disposal of the appeal or revision arising out of such assessment or from the date of completion of any other proceeding under the Act connected with such assessment or appeal or revision, whichever is later and shall be kept at the place

of business mentioned in the certificate of registration.

Before we examine the scope of the above rule, it is relevant to refer to certain essential facts. Original Petition No. 2805 of 1996 was preferred by the assessee on 15.2.1996 seeking a writ of certiorari to quash Ext. P3 notice dated 26.12.1995 issued under Rule 6(5) of the Central Sales Tax Rules proposing to reject the return and accounts and to complete the assessee's Central Sales tax assessment for the year 1979-80 on best judgment basis. Assessee was informed that assessee would be taxed and it was pointed out therein that total turnover as per the accounts was Rs. 14,44,36,612.04 and inter divisional transfer was Rs. 15,78,25,166.44 and the total turnover proposed was Rs. 30,22,61,778.48. Assessee was directed to file objection with evidence within seven days of receipt of notice failing which assessee was informed that the assessment would be completed. Assessee was fortunate to obtain stay from this Court not only in respect of the assessment year covered by Ext. P3 but also for the subsequent assessment years till the disposal of the Original Petition. Learned single Judge of this Court granted stay on 16.2.1996 and we have no hesitation to point out there has been laches and negligence on the part of the Salestax Department in not taking any steps to get the stay vacated or to take steps for early disposal of the case. Because of the interim order of stay obtained by the assessee the entire assessment for the period 1979-80 to 1992-93 covered by the proceedings were kept pending. Assessee is now trying to make capital out of the interim order obtained by it contending that the assessee had not kept the books of accounts for more than four years and consequently assessing authority cannot proceed with the assessment proceedings.

8. Learned single Judge of this Court disposed of the Original Petition No 2805 of 2996 on 25.7.2005 directing the assessee to prefer detailed objection to the pre-assessment notice. True while O.P.No 2805 of 1996 was pending Exts. P1 to P14 notices in Form No 50 were issued to the assessee proposing to complete the assessment for the years 1979-80 to 1992-93. Assessee had also filed O.P. No 1021 of 1996 challenging the assessment for the year 1978-79 and questioning the jurisdiction of the assessing authority in levying taxes on inter-division transfer. That Original Petition was disposed of by judgment dated 21.7.1998 directing the

assessee to file appeal against the assessment order before the appellate authority declining further reliefs under Article 226 of the [Constitution of India](#).

9. We are in this case inclined to accept the contention of the Revenue that assessments for the years 1979-80 to 1992-93 could not be completed because of the stay order granted by this Court in O.P.No. 2805 of 1996. On going through the pre-assessment notice dated 26.12.1995 issued under Rule 6(5) of the CST Rules it is evident that unless and until materials are available with regard to the inter divisional transfers assessments as such could not have been completed. Assessee had obtained stay on 15.2.1996 and the stay order was in force till the disposal of the Original Petition on 25.7.2005. In our view, assessee himself has contributed to the delay in completing the assessment proceedings. Assessee in our view cannot take shelter under Rule 32 of the Kerala General Salestax Rules which is only an enabling provision requiring the assessee to maintain accounts together with all vouchers, daily cash book, bills, declarations, way bills and delivery notes, deliveries, purchases, output and sales and the same shall be preserved by them for a period of four years, now for a period of two years from the date of disposal of the appeal or revision arising out of such assessment or from the date of completion of any other proceeding under the Act connected with such assessment or appeal or revision whichever is later. We are therefore inclined to accept the contention of the Revenue that the stay order granted by this Court stood in the way of completing the assessments in question.

10. We may in this context refer to the decision of the Bombay High Court in Commissioner of Salestax v. Ramdas Laxmidas (1976) 38 STC 354 where the court was dealing with the scope of Section 12A(3) of the Bombay Salestax Act, 1946 which casts obligation on the dealers to preserve certain documents for a particular period subsequent to the prescribed period. The court held as follows:

Thus, it will be noticed that not preserving the required documents for the statutory period prescribed by Section 12A(3) of the said Act and Rule 41-A of the said Rule attracted penal consequences. If, however, a dealer did not preserve his documents after the expiry of the prescribed period, no such consequences could be visited upon him. From this, however, it does not follow that the said Section

12A(3) or the said Rule 41-A also casted a converse obligation upon the dealer concerned to destroy the documents which he till then was required to preserve. The statutory obligation upon the dealer was to preserve documents for the specified period. Thereafter it is left to his volition whether he should preserve them or not. If he did not preserve them and they became necessary for him as his evidence in support of any claim for exemption or deduction which he put forward in his assessment proceedings, he must face the consequences, which all litigants, who fail to produce evidence in court must face, namely, he must fail. In the case of claims for deductions made by dealers under Section 6(3) of the said Act, it must be particularly borne in mind that Rule 26 of the said Rules requires them to produce certain documents in support of such claim on a demand being made in respect thereof upon them. It is for an assessee to satisfy the assessing authority that he is entitled to the deduction or exemption claimed by him, and if the statute requires certain documents to be produced in support of such claim and if an assessee voluntarily destroys them, it is hardly open to an assessee to complain if the claim is disallowed.

We would like to make it clear that the rule of prudence we have enunciated above that even after the expiry of the statutory period the dealer, though not under any statutory obligation to do so, should preserve his evidence until the proceedings are completed, would apply not only until the conclusion of the assessment proceedings and also until the disposal of any appeal, revision or reference there from, but not thereafter. Thus, a dealer is not required thereafter to preserve his books of account, duplicates and counterfoils of bills and cash memoranda, certificates and declarations given to him by those dealers, who purchased goods from him, etc. until the expiry of the period of limitation for the initiation of suo motu revision proceedings or reassessment proceedings or when no period of limitation is prescribed for the initiation of such proceedings, for all times; and if he does not preserve such documents, no adverse inference can be drawn against him by the reassessing or revising authority nor can such authority in suo motu revision or reassessment proceedings cancel, withdraw or disallow any deduction or exemption allowed to him in his assessment proceedings on the strength of such documents produced in the course of his assessment proceedings or in appeal or revision proceedings arising therefrom. There is no statutory obligation in a dealer

to so preserve these documents, and to hold otherwise on the grounds of an implied obligation or as a rule of prudence would run counter to commonsense and notions of justice, equity and good conscience.

The Karnataka High Court in *Sri Kottureswara Rice & Oil Mills and Anr. v. The State of Karnataka and Ors.* (1988) 71 STC 356 has also examined the scope of Rule 26(10) of the Karnataka Salestax Rules, 1957. The court applied the principle laid down by the Bombay High Court in *Ramdas Laxmidas'* case, *supra*, and took the view that the rule was meant to achieve the same object and as directed by the Bombay High Court it was to be observed by the dealers. The rule was required to be applied to all pending assessments since there was no time limit to complete the assessments under Section 12(3) of the Karnataka Salestax Act.

11. We are in agreement with the reasoning of the Bombay and Karnataka High Courts especially in the light of Section 17-A of the Kerala General Sales tax Act, 1963 which was inserted by Act 20 of 2000 with effect from 1.4.1993. Section 17-A states as follows:

Notwithstanding anything contained in Section 17 or Section 18, or in any judgment, decree or order of any court, tribunal or other authority any assessment or reassessment for any year shall be deemed to have been pending completion if, in the case of original assessment, return or turnover for the year or any period of the year relating to any period prior to 1st April, 1993 has been filed or due to be filed subsequent to the 1st day of April, 1993 and/or a notice in the prescribed form had been served upon the dealer and the assessment in respect of which had not been completed and in the case of a reassessment, the order of the appellate or revisional authority giving rise to such reassessment had been received and such reassessment has not been completed.

Further a Full Bench of this Court in *Geo Sea Foods v. Addl. Salestax Officer* : 2006(1)KLT72 held that in view of Section 17A of the Act, the concept of reasonable period for completing assessments for the period prior to 1.4.1993 is no more of any relevance or significance. The Full Bench held that under Section 17-A all assessments prior to 1.4.1993 and not completed as on that date shall be deemed to be pending as on 1.4.1993 and it is open to the Revenue to complete

such assessments in accordance with law notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority.

12. In view of the above mentioned circumstances, we are inclined to allow the appeal filed by the Revenue and hold that the mandate of Rule 32(21) will not enable the assessee to withhold the books of accounts and if no accounts are produced, it is open to the assessing authority to proceed with the assessment and complete the assessment on best judgment on the basis of available records. The assessing authority would complete the assessments within a period of six weeks from the date of receipt of a copy of this judgment, if the same has not been completed already, since the assessment relates to the years 1979-80 to 1992-93.

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