SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

V.A. Augustine and Co. Vs. State of Kerala

V.A. Augustine and Co. Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/721395

Court : Kerala

Decided On : Mar-17-1975

Reported in : [1975]36STC257(Ker)

Judge : P. Govindan Nair, C.J. and; V. Khalid, J.

Appeal No. : T.R.C. No. 31 of 1973

Appellant : V.A. Augustine and Co.

Respondent : State of Kerala

Advocate for Def. : The Government Pleader

Advocate for Pet/Ap. : T.V. George and; Baby George, Advs.

Disposition : Petition dismissed

Judgement :

V. Khalid, J.

1. The two questions which arise for decision in this T.R.C. are worded as follows :

(1) Whether, on the facts and in the circumstances of the case, there is material on record to sustain the rinding that the detected suppression is of a continuous nature ?

(2) If the answer to question No. (1) is in the negative, should not the addition be limited to Rs. 24,644.07 ?

2. The petitioner is a dealer in timber logs and sizes. For the year 1968-69, the petitioner returned a turnover of Rs. 3,51,035.45. The accounts were rejected by the Sales Tax Officer and assessment was completed on an estimated total taxable turnover of Rs. 4,98,901.07. The petitioner did not question seriously the rejection of the accounts and did not plead before the officer for acceptance of his accounts. The only question that was agitated before the authorities and repeated before us is whether the estimate made by the assessing authorities is reasonable.

3. From the materials available, it is seen that on inspection by the Intelligence Officer, Ernakulam, of the business premises of the petitioner on 3rd June, 1968, he recovered certain slips of paper and a secret diary which disclosed suppression to the tune of Rs. 24,644.40 in the course of two months. The purchases and sales of three varieties of timber in the last week of March, with reference to the closing stock inventory as on 31st March, 1969, were analysed by the Sales Tax Officer and it was found that there was huge suppression of sales and thereby he concluded that the pattern of suppression detected on 3rd June, 1968, continued till the end of the year. He therefore estimated the total suppression for the whole year at six times the total suppression detected and added the amount of Rs. 1,47,866 to the admitted turnover. This addition was objected to by the assessee. The objection was rejected by the Sales Tax Officer, which was confirmed by the appellate authority and also by the Tribunal. According to the petitioner, the estimate made by the assessing authority by adding six times the actual suppression detected is unreasonable, and does not bear any nexus with the actual suppression and, therefore, the said addition has to be rejected. In any case, it is contended that the assessing authority will be justified only in making an addition of Rs. 24,644.40, which was the actual suppression detected by the assessing authority on 3rd June, 1968.

4. We hold that the addition made by the assessing authority, confirmed by the appellate authority and the Tribunal, is well-founded. It is not disputed that on 3rd

June, 1968, when the Intelligence Officer inspected the premises, he detected suppression to the tune of Rs. 24,644.40 in the course of two months. The law is now well-settled that if the taxing authorities are satisfied of a pattern of suppression from the materials available, they will be justified in making addition, for the whole of the year, on the basis of the suppression detected. In this case, it cannot be seriously disputed that there was suppression for a period of two months. According to the petitioner, in timber business, bills for sales are issued long after the sales and purchase bills are also received long after the purchases and so the actual stock may not exactly tally with the accounts. Going by this explanation, it is clear that the books will not reflect, on each day, the actual turnover of business done by the assessee, which means that the actual turnover on each day will be suppressed from the regular books of account and will be seen in the slips of paper and secret diary maintained by the assessee. This explanation, according to us, afford sufficient material to indicate suppression and to hold that there is a regular pattern of suppression so far as the petitioner is concerned. On this basis, therefore, the tax officers are perfectly justified in multiplying the suppressed turnover six times.

5. We are fortified in our conclusion on the question of law, indicated above by a Full Bench decision of this Court reported in P. P. Varghese v. State of Kerala 1970 K.L.T. 979. One of us speaking for the Bench referred to all the authorities on the point and laid down the law in the following terms :

We understand these decisions to lay down that the answer to the question whether an inference that there has been a pattern of continuous suppression for any period must depend on the existence of material (and/ or circumstances), which affords a reasonable nexus to the inference. This means that there must be material to indicate suppression and material to indicate that there was a pattern of suppression.

In the above case, the taxing authorities recovered on inspection some slips which contained details of purchase of hill produce with which the assessee in question was dealing for the period from 17th January, 1962, to 21st January, 1962, namely, for five days. The Full Bench on consideration of the materials before it

held that in that case a pattern has been established and that there has been continuous suppression for a period of five days. On the above materials it was held that the taxing authorities were justified in drawing an inference that there was suppression and that the conclusion arrived at, under the circumstances was, an honest conclusion.

6. The ratio of that case is applicable to the case on hand. In this case, in addition to the fact that the Intelligence Officer detected on inspection suppression of a turnover of Rs. 24,644.40 for a period of two months from 1st April, 1968, to 3rd June, 1968, there is the explanation of the assessee himself about the practice that is followed by him, which betrays a pattern of suppression in the maintenance of accounts. When, as stated above, entries are not made then and there or the accounts do not reflect the correct turnover on each day, it can only be for suppression of the actual turnover. In this case we are satisfied that there are materials to indicate suppression and a pattern of suppression. We therefore find that the Tribunal was right in rejecting the contentions of the petitioner. We are not impressed with the plea of the petitioner's counsel that, in any case, suppression should be limited to the actual suppression detected. Once we hold that there has been a pattern of suppression, we must also hold that the taxing authorities were justified in arriving at the turnover, on such pattern, for the whole of the year.

In the result, the T.R.C. is dismissed. But, in the circumstances of the case, we do not order any costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com