

Prajeev Vs. State of Kerala

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Court : Kerala

Decided On : Mar-21-2005

Reported in : 2005(3)KLT357; (2007)8VST382(Ker)

Judge : C.N. Ramachandran Nair, J.

Acts : Kerala General Sales Tax Act, 1963 - Sections 5(1), 13(1), 17(4), 19(1) and 22(1); Kerala General Sales Tax Rules - Rule 18A

Appeal No. : W.P. No. 24950 of 2003

Appellant : Prajeev

Respondent : State of Kerala

Advocate for Def. : Raju Joseph, Sr. Government Pleader

Advocate for Pet/Ap. : Abraham Mathew and; Merlin Mathew, Advs.

Judgement :

C.N. Ramachandran Nair, J.

1. The common petitioner in both the W.Ps. is a dealer in timber, an item taxable under the Vth Schedule to the Kerala General Sales Tax Act (hereinafter called 'the Act'). Under the scheme of levy of tax under Vth Schedule, timber attracts tax at the point of first sale in the State at the rate of 10% if such sale is to a registered

dealer and again taxable at the point of last sale by a registered dealer at the rate of 2%. The assessments of the petitioner for the years 1998-99 to 2001-2002 were completed under Section 17(4) of the Act based on statements filed by the petitioner in Form No. 21CC prescribed under Rule 18A of the K.G.S.T. Rules. It is seen from the said assessment orders produced as Exts.P1 to P4 in both the above W.Ps. that the officer completed the assessments as 'Nil' assessments probably because the annual turnover declared and accepted for all the four years was below Rs. 2 lakhs. However, later officer issued Section 19(1) notice for all the assessment years produced as Ext.P5 in the W.Ps. proposing to revise the assessments to demand tax on the declared turnover under second proviso to Section 5(1) (v) of the Act which provides for levy of tax on every item under the Vth Schedule at the rate prescribed under Column 6 or 8 as the case may be irrespective of the turnover of the dealer. Timber being an item falling under Entry 8 of the Vth Schedule to the Act and since petitioner's sales were not to a registered dealer, the turnover of the petitioner should have been assessed for all the years at the rate provided under Column 8 of the Vth Schedule to the Act even though petitioner's annual turnover for the relevant years was below Rs. 2 lakhs. It is this mistake that the office sought to correct by invoking powers under Section 19(1) of the Act which was questioned by the petitioner in the first W.P. namely, W.P. No. 24950/2003. However, during the pendency of the said W.P. the officer revised assessments and levied tax on the turnover at the rate provided under Column 8 of Entry 8 of the Vth Schedule to the Act which was questioned by the petitioner by filing statutory appeals before the Appellate Authority. However, since the levy was in accordance with the second proviso to Section 5(1) (v) of the Act, the Appellate Authority dismissed the appeals vide Ext.P12 order produced in W.P. No. 27577/2004. Therefore, petitioner filed the second Writ Petition, W.P. No. 27577/2004 questioning not only the orders of assessments confirmed in appeal but also seeking a declaration that second proviso to Section 5(1) (v) is arbitrary and discriminatory.

2. I heard counsel appearing for the petitioner and also Special Government Pleader Mr. Raju Joseph appearing for respondents. The contention of the petitioner is that Section 5(1) of the Act provides for levy of tax on dealers other than casual traders and agents of non-resident dealers only if the total turnover of

the dealer for an year is not less than Rs. 2 lakhs. According to the petitioner, the turnover limit for liability provided under Section 5(1) applies to goods covered under the Vth Schedule also. The further contention raised is that the second proviso to Section 5(1) (v) should be declared invalid as the same is against the main charging Section namely, Section 5(1) of the Act. The Special Government Pleader on the other hand contended that Section 5(1) (v) is an independent charging Section for goods coming under the Vth Schedule and by virtue of the second proviso to it, the sales turnover of a registered dealer of goods coming under the Vth Schedule will be subject to tax irrespective of the turnover. In order to appreciate the rival contentions, the relevant Sections have to be gone into and therefore, Section 5(1) with the relevant sub-section and it's provisos are extracted hereunder for easy reference.

'5. Levy of tax on sale or purchase of goods.-

(1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than (two lakh rupees) and every casual trader or agent of a non-resident, whatever be his total turnover for the year, shall pay tax on his taxable turnover for that year,-..

(v) in the case of goods specified in the Vth Schedule at the rates and at the two points specified against such goods in the said Schedule:

Provided that where there are no two points of sale in the State for any goods coming under the Vth Schedule and the first sales is to a person other than a registered dealer, the rate specified in column (8) of that Schedule shall apply to such sales.

Provided further that the registered dealer effecting the last sale within the State to a person other than a registered dealer shall, pay tax at the rates shown in column (6) or in column (8), as the case may be, of the Fifth Schedule irrespective of his turnover:

Provided also that where a registered dealer, after purchasing the goods on payment of the tax mentioned in column (4) of the Vth Schedule,-

(a) uses or disposes of such goods in any manner other than by way of sale within the State, or

(b) despatches them to any place outside the State except as a direct result of sale in the course of inter-state trade or commerce;

he shall pay tax at the rate shown in column (6) of the said Schedule on the purchase turnover of the goods;.'

From the second proviso to Section 5(1) (v) it is clear that a registered dealer selling any Vth Schedule goods is liable to pay sales tax on his turnover of such goods either at the rate provided under column (6) or column (8) as the case may be, irrespective of his actual turnover. In other words, the minimum annual turnover required for liability under Section 5 (1) does not apply to registered dealers dealing in goods falling under the 5th Schedule. Therefore, the revised assessments completed under Section 19(1) by the officer and confirmed by the Appellate Authority are consistent with the statutory provisions and have to be upheld subject to petitioner's challenge against the validity of the legislation.

3. Counsel for the petitioner rightly pointed out that Section 5(1) is a general provision for levy of tax on sales and deemed sales of all goods under the K.G.S.T. Act. In other words, the minimum annual turnover required for levy of tax on goods provided under Section 5(1) ' applies to goods falling under the 5th Schedule also. However, the absolute liability for sales tax irrespective of minimum turnover for Vth Schedule goods provided under second proviso to Section 5(1) (v) applies only to registered dealers. In other words, while a dealer not registered under the K.G.S.T. Act is not liable to pay any sales tax on Vth Schedule-items if his annual turnover is below Rs. 2 lakhs, a registered dealer will be liable to pay tax even if his annual turnover of Fifth Schedule goods is below Rs. 2 lakhs. The contention of counsel for the petitioner is that the two charging sections should be read together giving a harmonious construction so that there is no discrimination between registered dealers and unregistered dealers so far as levy of tax is concerned. The contention of the Special Government Pleader is that the Legislature consciously provided for levy of tax on registered dealers engaged in purchase and sale of Vth Schedule items irrespective of their turnover and the

Court cannot by interpretation change the incidence of tax. After hearing both sides I am of the view that the petitioner's challenge against the validity of second proviso to Section 5(1)(v) cannot be sustained on the ground of discrimination firstly because registered dealers and unregistered dealers do not come under the same class and secondly goods brought under Vth Schedule and other goods do not come under the same class. A dealer who does not have the minimum turnover provided under Section 13(1) of the Act is not bound to apply for and get registration though he is free to apply for and obtain registration. Once a dealer is registered under the K.G.S.T. Act, he is given the privilege to collect tax under Section 22(1) of the Act, whereas an unregistered dealer even if he is liable to pay tax by virtue of his turnover exceeding the non-taxable limit in the course of the year will not be entitled to collect tax. Similarly a registered dealer is entitled to get statutory forms and declarations for the purpose of transport of goods and also for the purpose of purchase of goods at concessional rate etc. Therefore, the Act treats registered dealers and unregistered dealers as two classes of dealers for various disciplines of the Act. So much so, an absolute liability on registered dealers in respect of 5th Schedule items irrespective of their annual turnover cannot be challenged on the ground of discrimination based on the argument that unregistered dealers in the same goods are not liable if their annual turnover is below Rs. 2 lakhs. The next contention raised by counsel for the petitioner is that even on registered dealers, the absolute liability for payment of tax irrespective of annual turnover applies only to Vth Schedule goods and not in respect of goods coming under the 1st or 2nd Schedule to the Act. I do not think the argument can be accepted because whatever be the reason, the Legislature has decided to include certain items of goods under one class under the Vth Schedule and the levy of tax provided for those goods unlike other goods, is generally at two points. Here again, the Court is not competent to go into the basis of grouping some goods under the Vth Schedule to the Act for the purpose of separate scheme of levy and the Legislature has the freedom for fixing rate of tax and point of levy of tax on goods coming under that Schedule. Since timber falls under a separate class of goods grouped under the Vth Schedule, there is nothing wrong in providing an absolute liability irrespective of turnover on the sale of such goods by registered dealers. Therefore, the challenge against the validity of second proviso

to Section 5(1)(v) on the ground of discrimination is not sustainable and I reject it. Accordingly, the revised assessments completed under Section 19(1) and the order in appeal are upheld.

4. Having regard to the fact that the petitioner has not collected tax and initially petitioner was granted exemption and since stay was in force till now, the petitioner is granted six equal monthly instalments to clear the arrears of tax without any interest, first of which will be paid on or before 31st March and the balance on or before the last day of five succeeding months. If the petitioner makes payment as above, no collection charges also should be recovered from the petitioner. However, if the petitioner commits default in payment of any instalment, the instalment facility will stand vacated and the respondents will be free to proceed for recovery of the entire arrears with applicable interest and collection charges if any payable.

The W.Ps. are disposed of as above.

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