

Sreejith Vs. Intelligence Officer

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Court : Kerala

Decided On : Mar-16-2006

Reported in : 2006(4)KLT260

Judge : C.N. Ramachandran Nair, J.

Acts : Kerala General Sales Tax Act, 1963 - Sections 20, 45 and 45A; Kerala General Sales Tax Rules, 1963 - Rule 49

Appeal No. : O.P. No. 21903 of 2001

Appellant : Sreejith

Respondent : intelligence Officer

Advocate for Def. : T.R. Ravi, Government Pleader

Advocate for Pet/Ap. : Arikkat Vijayan Menon,; Harisankar V. Menon and; Meera V

Disposition : Appeal dismissed

Judgement :

C.N. Ramachandran Nair, J.

1. Petitioner who has succeeded to the business after death of his father is challenging notice issued by the 1st respondent to produce books of accounts for

verification and simultaneous notice proposing penalty if books are not produced and proved correct with reference to business transactions noticed on inspection held during the life time of petitioner's father. Petitioner's father was carrying on business after taking registration under the KGST Act. The business premises was inspected by the Intelligence Squad of Sales tax Department on 5-11-1998 and shop inspection report was prepared. Even though notice was issued for production of books of accounts during life time of petitioner's father, he did not produce the books of accounts. Petitioner's father died on 9-3-1999, and thereafter notice was issued in the name of the business concern calling for books of accounts to compare the same with the data gathered during shop inspection and recorded in the shop inspection report.

2. It is clear from Ext. P1 that in spite of notice issued earlier, books were not produced either by the registered dealer or by the legal heir namely the petitioner who succeeded to the business after death of his father. Therefore, penalty was simultaneously proposed after drawing inference of evasion as stated in Ext. P1 notice, if petitioner refuses to produce books of accounts. This notice, is understood as a penalty notice by the petitioner, and accordingly petitioner has challenged the same on the ground that 1st respondent is not authorised to levy penalty under Section 45A of the KGST Act on the legal heir after the death of the registered dealer.

3. I heard the counsel appearing for the petitioner and the Government Pleader appearing for respondents.

4. In support of the petitioner's contention that penalty proceeding is not maintainable against the successor of the business after the death of the proprietor, counsel has cited the decisions reported in Hindustan Steel v. State of Orissa 25 STC 211, C.I.T. v. Anwar Ali : [1970]76ITR696(SC) , P.D. Sudhi v. Intelligence Officer 85 STC 337 and Rameswar Prasad v. CW : [1980]124ITR77(All) . Government Pleader on the other hand referred to the decision reported in Addl. Income Tax Officer v. E. Alfred : [1962]44ITR442(SC) .

5. Admittedly petitioner has succeeded to the business of his father who was carrying on the business with registration obtained under the KGST Act. It is not

known whether petitioner took fresh registration or is still continuing the business with father's registration. However, so far as Ext.PI is concerned, there is no need to consider whether business is continued by the petitioner after death of his father, or whether petitioner closed down the business. It is clear from Ext.P1 that the shop was inspected during life time of the petitioner's father on 5-1-1998 and shop inspection report was prepared containing physical stock noticed on inspection, books of accounts found etc. By Ext. P1, 1st respondent has only called for the accounts from petitioner's father during his life time and on account of his failure and after his death from the successor namely the petitioner, to produce the books of accounts for verification of the same and for comparing the same with the data recorded in S.I.R. In fact, this procedure does not involve any penalty and penalty arises only if the officer finds violation of Rules or evasion after verification of the books of accounts and after comparing the same with physical stock noticed on inspection. Therefore, at the stage of production of books of accounts, petitioner need not apprehend any penalty. However, strangely petitioner's father during his life time and petitioner after the death of his father consistently refused to produce the books of accounts and consequently the officer has inferred that physical stock found on inspection and recorded in the SIR is excess stock and therefore he has proposed penalty, if petitioner still does not substantiate the correctness of accounts by producing the same. Therefore, the petitioner's assumption that Ext.PI is a penalty notice, in the first place, is absolutely wrong. All what Ext.PI says is that penalty will be levied if petitioner still does not discharge his duty of establishing that book figures tally with physical stock found on inspection. Even though apprehension of the petitioner that penalty proceeding is already initiated by the 1st respondent is factually incorrect, I feel, the issue raised by the petitioner as to whether Section 45ft penalty can be levied against the successor and legal heir of the dealer after his death calls for decision by this Court. The decisions referred to by the petitioner are not directly on the point, and most of the decisions deal with the circumstances in which penalty can be levied. The last case referred to by the petitioner relates to levy of penalty for non-filing of wealth tax return by the assessee during his life time, and therefore has no application to the facts of this case. The relevant provision of the KGST Act pertaining to the situation after the death of the assessee is contained in Section

20 of the KGST Act and Rule 49 of the KGST Rules, which are similar in substance. Therefore, reference to the relevant section is sufficient and for easy reference to Section 20 is extracted herein-below:

20. Assessment of legal representatives: Where a dealer dies, his executor, administrator, or other legal representative shall be deemed to be the dealer for the purposes of this Act, and the provisions of this Act shall apply to him in respect of the business of said deceased dealer, provided that, in respect of any tax, fee or other amount assessed as payable by any such dealer or levied on him or any tax, fee or other amount which would have been payable by him under this Act if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the. deceased in his hands.

What is clear from the above section is that on the death of a dealer, for all purposes of the KGST Act, the successor shall be treated as 'dealer' under the Act. However, it is to be specifically noted that the liability of the successor or legal representative of the deceased dealer is limited to the extent of the assets of the deceased reaching the hands of the successor or legal representative. In other words, the legal heir does not have any personal liability in respect of the business carried on by the deceased assessee. This applies not only to tax but also to other liability under the statute including interest and penalty because the terms used are 'tax, fee or other amount which would have been payable by the assessee', had he not died. Obviously tax, fee, interest, penalty or any other amount could be recovered from the assets of the deceased only, if it is payable under the Act which is normally based on adjudication by the concerned officer. The amount can be recovered by attachment and sale of assets of the dealer held by legal heirs, if on demand they refuse to remit the same. However, there may be proceedings pending at the time of death of the dealer. The death of the assessee does not lead to end of proceedings initiated against him. Even after the death of the dealer, it is the duty of the assessing officer to complete the assessment or any other proceeding pending against the dealer as on the date of his death and by virtue of Section 20, the assessing officer or any other authority under the statute is bound to issue notice to hear legal heirs and complete adjudication before any demand is raised against any legal representative. However, if any of the legal representative

to which notice is issued, does not hold any asset of the deceased dealer, then, he or she can ignore the notice because consequential orders cannot be enforced against them by virtue of operation of the latter part of Section 20 of the Act. On the other hand, stake is there for the legal representative who holds the assets of the deceased dealer because any liability arising under the Act, is recoverable from the assets of the dealer and so much so, legal heirs' interested in the property either by inheritance, transfer or otherwise, should defend all proceedings initiated to avoid liability. Even though by virtue of the fiction provided in Section 20, the legal heir can be proceeded with as if the original dealer is not dead, no personal action such as prosecution is permissible against the legal heir. However, I do not think there is any need to consider as to which are the kind of penalty proceedings that could be initiated or continued against legal heir after the death of a dealer. In the present case, the proceeding initiated vide Ext.P1 is perfectly maintainable against the petitioner who has succeeded to his father's business as legal heir because it is only a case of calling for books of accounts of the business after the death of the dealer for comparison with the data gathered and recorded in shop inspection report prepared during the life time of the original dealer. If during the life time of petitioner's father, he made unaccounted purchases or sales and practised evasion of tax which will be proved when book figures are verified and compared with the physical stock recorded during shop verification, then penalty can be levied on petitioner, only as legal heir after giving opportunity to the petitioner to demonstrate that there was no evasion. However, as already stated, liability is not personal liability of the petitioner or any other legal heir but will be a charge on the assets inherited or obtained by the petitioner and other legal heirs from the deceased-dealer.

In the circumstances, and by virtue of fiction available in Section 20 of the KGST Act, all proceedings for assessment, or for levy of penalty for evasion of tax and interest for belated payment of tax can be continued and can be recovered from assets of the deceased -dealer held by legal heirs and in this case from the petitioner. From the above finding, I uphold Ext. P1 notice issued against the petitioner. However, petitioner is granted six months time from today to collect and produce books of accounts before the Officer to verify the same and consider the penalty, if liable. O.P. is dismissed but by granting time for compliance as above.

No costs.

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