

J and J Timbers Vs. Intelligence Officer (ib), Investigation Branch, Department of Commercial Taxes and ors.

J and J Timbers Vs. Intelligence Officer (ib), Investigation Branch, Department of Commercial Taxes and ors.

SooperKanoon Citation : sooperkanoon.com/728987

Court : Kerala

Decided On : Oct-06-2008

Reported in : (2009)21VST377(Ker)

Judge : H.L. Dattu, C.J. and; Thomas P. Joseph, J.

Acts : Kerala General Sales Tax Act, 1963 - Sections 5(3), 45A and 46; Kerala General Sales Tax Rules

Appeal No. : W.A. No. 2000 of 2008

Appellant : J and J Timbers

Respondent : intelligence Officer (ib), Investigation Branch, Department of Commercial Taxes and ors.

Advocate for Def. : Muhammed Rafiq, Sr. Government Pleader

Advocate for Pet/Ap. : M. Chandrasekharan (Sr.),; T.M. Sreedharan and; V.P. Nar

Disposition : Appeal dismissed

Judgement :

H.L. Dattu, C.J.

1. This writ appeal is directed against the orders passed by the learned single judge in W.P. (C) No. 26857 of 2008 dated September 16, 2008 See para 379 supra. By the impugned order the learned single judge has rejected the writ petition.

2. In the writ petition filed, the petitioner has called in question exhibits P4 and P7 notices issued by the first respondent, Intelligence Officer (IB), Investigation Branch, Department of Commercial Taxes, Kollam, in exercise of the powers under Section 45A of the Kerala General Sales Tax Act, 1963 (for brevity and convenience, hereinafter referred to as, 'the Act of 1963').

3. The subject-matter of exhibit P4 notice is evasion of tax by the petitioner by making bogus claim of sale of timber at concessional rate without any actual sale of timber to the form 18 suppliers, M/s. J and Timbers, Chalakudy, and the penalty proposed for the years 2001-02 to 2004-05. In the lengthy notice issued, the Intelligence Officer has narrated in detail the reasons and his tentative opinion for initiating penalty proceedings and then has directed the assessee to offer its explanation, if any.

4. After receipt of the notice, the assessee has filed its objection, denying the accusation made in the notice and further has requested to drop the proposed proceedings.

5. The Intelligence Officer after receipt of the reply and after considering the same, by reiterating his earlier proposal made, has issued exhibit P7 notice and further has granted an opportunity to produce evidence, if any, to the petitioner in support of his defence/explanation in the reply filed to exhibit P4 notice.

6. It is the legality or otherwise of the show-cause notice that is called in question by the assessee by filing the writ petition. As we have already noticed, the learned single judge has rejected the writ petition. It is the correctness or otherwise of the said order that is the subject-matter of this writ appeal.

7. Sri Chandrasekharan, learned Senior Counsel would contend, that, the appellant is an assessee on the files of the Assistant Commissioner (Asst.),

Special Circle, Thrissur, who is an officer higher grade than the officer who has initiated penalty proceedings under Section 45 A of the KG ST Act and the assessments for the assessment years 2000-01 to 2004-05 are pending before the assessing authority and the assessing authority alone can make assessment and impose penalty, if any. Secondly, the learned Counsel would contend, even before the final assessment could be completed, his power of assessment cannot be usurped by the Intelligence Officer who has initiated proceedings under Section 45A of the Act, by taking decision on the correctness or otherwise of form 18 declarations. These are the only two submissions of the learned Senior Counsel at the time of hearing the appeal for 'admission', though several other grounds are taken in the memorandum of writ appeal filed.

8. Chapter V of the Act provides for assessment, collection and penalty of tax under the Act. Chapter VII of the Act deals with offences and penalties. It is settled law in so far as the KGST provisions are concerned, that, the proceedings under Chapter V and proceedings under Chapter VII of the Act are different and distinct. It would be useful now to refer to Section 45A of the Act which falls within Chapter VII. The said provision is as under:

45A. Imposition of penalty by officers and authorities.--(1) Notwithstanding anything contained in Section 46 if the assessing authority or the Appellate Assistant Commissioner is satisfied that any person,--

(a) being a person required to register himself as dealer under this Act, did not get himself registered; or

(b) has failed to keep true and complete accounts; or

(c) has failed to submit any return as required by the provisions of this Act or the Rules made thereunder; or

(d) has submitted an untrue or incorrect return ; or

(e) has failed to comply with all or any of the terms of any notice or summons issued to him by or under the provisions of this Act or the Rules made thereunder; or

(f) after purchasing any goods in respect of which he has made a declaration under proviso to Sub-section (3) of Section 5, has failed to make use of the goods for the declared purpose ; or

(g) has acted in contravention of any of the provisions of this Act or any rule made thereunder, for the contravention of which no express provision for payment of penalty or for punishment is made by this Act;

(h) or has abetted the commission of any of the above offences, such authority or officer may direct that such person shall pay, by way of penalty, an amount not exceeding twice the amount of sales tax or other amount evaded or sought to be evaded, where it is practicable to quantify the evasion or an amount not exceeding ten thousand rupees in any other case.

Explanation I.--The burden of proving that any person is not liable to the penalty under this section shall be on such person.

Explanation II.--For the purposes of this sub-section the expression 'assessing authority' includes any officer not below the rank of Sales Tax Officer specified by the Government in this behalf by notification in the gazette.

(2) No order under Sub-section (1) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.

9. The section commences with a non obstante clause. It says, that notwithstanding anything contained in Section 46 of the Act, the assessing authority or the Appellate Assistant Commissioner, if he is satisfied that any person who has committed any offences specified under Clauses (a) to (h), may direct such person to pay penalty not exceeding twice the amount of sales tax or other amount evaded or sought to be evaded, where it is practicable to quantify the evasion of tax or an amount not exceeding ten thousand rupees in every other case.

10. Explanation I appended to section casts the burden on the dealer that he is not liable to the penalty under Section 45A of the Act.

11. Explanation II appended to the section defines the meaning of the expression 'assessing authority'. It is an inclusive definition. In view of this Explanation, 'assessing authority' includes any officer not below the rank of the Sales Tax Officer specified by the Government in this behalf by issuing a notification in the official gazette. It is not in dispute nor it can be disputed that the Intelligence Officer is also treated as an 'assessing officer' for the purpose of Section 45A of the Act.

12. While interpreting taxing statutes, it is often said, the courts should always keep in mind the purpose of the Act and the object of particular section. The courts should always seek to find out the intention of the Legislature and this can be done by referring to the language used in the statute itself.

13. Section 45A of the Act, provides for imposition of penalty by officers and authorities under the Act, if those authorities are satisfied that any person, being a person required to register himself as a dealer under the Act, but has not registered himself, has failed to-keep true and complete accounts, has failed to submit any returns as required under the Act or the Rules framed thereunder, etc., may impose a penalty. Since penalty proceedings are quasi-criminal proceedings, the imposition of penalty can be done only after issuing a show-cause notice to the assessee and after affording an opportunity of hearing. The proceeding contemplated by Section 45A has nothing to do with the jurisdiction of the assessing authority. Merely because the assessment proceedings are pending for several years, it does not preclude the Intelligence Officer of the Department to initiate proceedings under Section 45A of the Act. These proceedings, in our view, need not have to wait till the regular assessment proceedings are completed by the assessing officer. The proceedings under Section 45A can be initiated and continued by an officer who has been authorised by the Government in this behalf by notification in the Gazette. Therefore, it cannot be said that the Intelligence Officer has no jurisdiction to initiate 45A proceedings during the pendency of regular assessment proceedings before the assessing officer, since penalty is imposed on a person on account of the commission of wrongful act and secondly, penalty proceedings are distinct and different from assessment proceedings and thirdly, findings in the assessment proceedings are not conclusive and the findings

therein would only be a piece of evidence and the authority authorised to impose penalty should consider the entire material afresh before imposing penalty.

14. We sum it up by observing that the penalty proceeding is an independent proceeding and is initiated to punish the violation of the statutory provision by a person and merely because the assessment proceedings are pending before a superior officer, it is not a bar for the intelligence officer, who has been authorised by the Government by issuing a notification in the Gazette to initiate and complete the proceedings under Section 45A of the Act.

15. We are only at the stage of show-cause notices issued by the first respondent. In our opinion, the writ court can entertain a petition, if for any reason, the authority who has issued the notice has no competence to issue such notice or the notice issued is contrary to the statutory provisions, etc. These grounds are neither urged nor argued by the writ petitioner. Under the rule requiring exhaustion of remedies provided under the Act, prior to judicial review by this Court, a party may not ask a court to rule on an adverse decision of a statutory authority until he has availed himself of all possible remedies provided under the statute itself. The major purpose of exhaustion doctrine is to prevent the courts from interfering with the administrative process by statutory authorities until they have reached a conclusion.

16. The Supreme Court has stated the reasons why it is desirable to the writ court not to disturb statutory proceedings. Because taxing statutes often vest with the statutory authorities with exclusive procedures, it is that statutory authority which is initially responsible for interpreting and applying its own statute. Failure to exhaust statutory remedies deprives the court the benefit of the statutory authorities' experience in exercising administrative discretion as well as a factual record to review. The authorities under the Act are created for the purpose of applying the statute in the first instance. Accordingly, it is normally desirable to let all statutory authorities develop the necessary factual background upon which decision should be based. And since the decision of the statutory authorities frequently requires expertise, the authorities should be given the first chance to exercise their discretion and further apply their expertise. Apart from this, the statutory

authorities are created as a separate entity and are vested with certain powers and duties, the courts ordinarily should not interfere with the action of the statutory authorities until it has completed its own action or else has clearly exceeded its jurisdiction. We hasten to add, the exhaustion doctrine is not inflexible and when the reasons supporting the doctrine are found inapplicable, the doctrine should not be blindly applied.

17. In view of the above, the learned single judge has not committed any error, whatsoever, which would call for our interference. Accordingly, the writ appeal requires to be rejected and it is rejected, without reference to the respondents. Ordered accordingly.

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