

V. Aboobacker Vs. State of Kerala

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Court : Kerala

Decided On : Apr-11-2008

Reported in : (2010)27VST308(Ker)

Judge : H.L. Dattu, C.J.,; C.N. Ramachandran Nair and; K.M. Joseph, JJ.

Acts : Kerala General Sales Tax Act, 1963 - Sections 17(2), 17(3) and 29; Kerala General Sales Tax Rules, 1963 - Rule 32(5)

Appeal No. : S.T.R.V. Nos. 125 and 219 of 2004, 202 of 2006 and T.R.C. No. 577 of 2001

Appellant : V. Aboobacker

Respondent : State of Kerala

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : N. Muraleedharan Nair, Adv.

Judgement :

ORDER

C.N. Ramachandran Nair, J.

1. The revision petitioners are registered dealers under the Kerala General Sales Tax Act, 1963 (hereinafter called the 'Act'). All of them are engaged in the inter-

State purchase of goods for sale in Kerala. During the relevant assessment years to which impugned orders of the Tribunal relate, the petitioners were found to have suppressed at least some of the inter-State purchases and consequently assessments were made after rejection of books of account and on estimation of turnover. Suppression in accounting of inter-State purchases was found by the Department after verification of their books of account with reference to arrival of goods to the petitioners entered in the registers maintained at the border check-posts in the State. Even though rejection of books of account was confirmed in two levels of appeals, including the Tribunal, some modifications have been effected in the estimation of turnover or the additions to the turnover made by the assessing officers in the course of assessments. However, the Tribunal did not accept the petitioners' case that addition on the ground of suppression of inter-State purchases should be limited to the actual suppression found by the Department against which these revisions are filed. When the revision petitions came up for hearing before a Division Bench of this Court, counsel for the petitioners relied on two decisions of a Division Bench of this Court in *Surya Agencies v. State of Kerala* [2008] 11 VST 419 : [2004] 12 KTR 215 and *C.O. Varghese v. State of Kerala* [2008] 11 VST 149 : [2004] 12 KTR 528 and contended that addition on account of unaccounted inter-State purchases should be limited to the actual suppression noticed and no further addition or estimation is possible. However, the Division Bench while hearing these cases did not agree with the view expressed by the other Division Benches in the above two decisions, because those decisions virtually direct the assessing officer to accept the books of account, except in regard to actual suppression found by the Department. The Division Bench accordingly referred the matter for consideration by a Full Bench. We have heard all counsel appearing for the petitioners and the Special Government Pleader appearing for the respondent.

2. The question that stands referred to us is whether the view expressed by the two Division Benches of this Court in the above two decisions restricting addition on account of suppressed inter-State purchases only to the extent of actual suppression found by the Department, is justified or not. Counsel for the petitioners referred to the reasoning of the Division Benches for arriving at the conclusion which is to the effect that the Department, could have verified the

registers maintained at all the check-posts pertaining to inter-State purchases made by the dealer concerned, and made further addition, if there was proof of more suppressions. The Division Benches were of the view that in the absence of proof of further suppression found after verifying the check-post records, the assessing officer has no justification to make addition on account of suppressed inter-State purchases over and above the actual suppression found by the Department. The Special Government Pleader appearing for the respondent on the other hand contended that it is for the assessee to prove that his books of account are full and complete and once accounts are found to be incorrect or incomplete on account of suppression of inter-State purchases found, the assessing officer under Section 17(3) of the Act is entitled to reject the books of account and make estimation in accordance with settled norms for estimation. He further pointed out that by virtue of the two decisions of the Division Benches above referred, the Department is bound to accept the books of account of the dealer except in regard to actual purchase suppression found by the Department. The Special Government Pleader further pointed out that there are ever so many channels through which goods reach the State and there is no presumption that all goods received by a dealer reach the State through road over which there is check-post and that the goods get accounted therein. In answer to this, counsel for the petitioners contended that barricades are installed at the road check-posts and all goods reaching the State are entered in the check-post registers and it is open to the assessing officer to verify check-post records to check whether full inter-State purchases made by the dealer are accounted or not.

3. We are unable to uphold the view taken by the Division Bench in the above two decisions for more than one reason. Firstly a substantial quantity of goods reaches the State through railways and through coastal shipping lines which are not accounted at any check-post maintained by the State Sales Tax Department. Secondly it is a well-known fact that there are ever so many small roads connecting this State with other States along which no check-post is set up. In fact cases pertaining to smuggling of goods in and out of Kerala through such roads reaching this Court are several in number. Above all going by the volume of goods arriving in Kerala it is physically impossible for the Department to verify check-post records of all the check-posts for the purpose of checking whether a dealer in

Kerala has accounted his full inter-State purchases. Therefore we feel, the view taken by the Division Benches in the above two decisions that the Department can get information about full inter-State purchases or stock transfers from check-post registers is neither correct nor realistic. In fact the setting up and maintenance of border check-posts by the State under Section 29 of the Act does not absolve a dealer from maintaining books of account in terms of Chapter V of the KGST Rules. Among other things Sub-rule (5) of Rule 32 states that 'every dealer shall keep separate accounts in respect of sales or purchases in the course of export or import and in respect of inter-State sales or purchases'. It is therefore the duty of a dealer to keep full and complete accounts of his entire transactions and returns filed based on accounts will be accepted only if accounts are found to be true, correct and complete. Section 17(2) of the Act provides for acceptance of returns only if the assessing authority is satisfied that the return is correct and complete. The correctness or completeness of a return is tested against the accounts and if the accounts are found to be incomplete, then the return loses its credibility and the duty in that case for the assessing officer is to adopt the procedure under Section 17(3) of the Act, that is to make best judgment assessment based on materials gathered by him. The inter-State purchase is one way of sourcing the goods for sale by the dealer in Kerala. The very same dealer may be sourcing goods locally by purchase or otherwise. It is hard to believe that a dealer who is engaged in suppression of inter-State purchases is honest in regard to local purchases accounted by him. Suppression of inter-State purchases in fact affects the credibility of the dealer and once his credibility is doubted by the Department, the onus is on the dealer to prove that other transactions are fully accounted by him.

4. The cases before us pertain to dealers who are found to have practised suppression in inter-State purchases. If the view expressed by the Division Bench in the above two decisions is followed, then in the absence of finding of any other suppression of inter-State purchases, after verifying the full check-post records, the assessing officer cannot make estimation of turnover or addition to the turnover except for the value of goods in respect of which suppression is proved. Proof of purchase suppression leads to only one conclusion that the accounts are incomplete. If the accounts are found to be incomplete, it is unreliable and the

recourse available to the assessing officer is to make best judgment assessment in terms of Section 17(3) of the Act. Guidance for best judgment assessment is provided in Section 17(3) itself whereunder the officer is bound to conduct enquiry, collect reliable materials and make assessment relying on the same. In fact there are ever so many decisions both of this Court and the Supreme Court giving guidelines on best judgment assessment. The Supreme Court in Commissioner of Sales Tax v. H.M. Esufali, H.M. Abdulali [1973] 32 STC 77 held that the assessing officer while making best judgment assessment no doubt should arrive at his conclusion without any bias and on rational basis. The Supreme Court further added that the assessing authority should not be vindictive or capricious and assessment should be made on a bona fide estimate and on rational basis. While these are the principles laid down by the Supreme Court for the assessing authority to make best judgment assessment under Section 17(3), we do not think this Court can restrict the power of the assessing authority to limit the addition to the actual suppression found by the Department. Dealers are well aware that goods passing through check-post are accounted in the registers therein and if they do not account such purchases in their accounts, there is likelihood on detection and consequent rejection of books of account and estimation of turnover. If dealers who get goods through check-post dare to suppress such purchases, they are only trying to capitalize on the inadequacy of the Department to cross check the accounts with check-post records. In other words, they are well aware of the limitations of the Department in verifying the entire check-post records all over the State and cross-checking the correctness of the accounts of a dealer. In this context, we feel the assumption of the Division Benches in the above two decisions that the Department could have verified the check-post records of all check-posts in the State and found out suppression beyond the detected ones in the case of dealers concerned is unrealistic and therefore unacceptable. We are therefore of the view that the decisions of the Division Benches in the above two decisions restricting addition on account of suppression of inter-State purchases only for the value of actual suppression noticed is not correct law. We therefore overrule this view expressed by the Division Bench in the above two decisions. We further declare that once the accounts are found to be incomplete or incorrect on account of material defect found by the Department, such as purchase or sales

suppression, whether it is local or inter-State, the assessing officer is free to reject the books of account and proceed for estimation of turnover in accordance with the principles laid down in Section 17(3) of the Act and the law declared by High Courts and Supreme Court. Since the petitioners have raised other issues particularly the reasonableness of the additions, we feel the cases should go back to the Division Bench for considering these issues. We accordingly remit the cases to the Division Bench for decision on other issues consistent with the law declared above.

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