K.Sankaran Vs. The Intelligence officer (Ib),commercial

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Court : Kerala

Decided On : Nov-18-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : K.Sankaran

Respondent : The Intelligence officer (Ib),commercial

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR TUESDAY, THE18H DAY OF NOVEMBER201427TH KARTHIKA, 1936 WP(C).No. 12748 of 2009 (K) ------------------------------------- PETITIONER(S): ----------------------- K.SANKARAN, KAROLLIL HOUSE, KAROLLIL LANE, PONNURUNNI, THAMMANAM, COCHIN-32. BY ADVS.SRI.V.V.ASOKAN SRI.C.N.PRABHAKARAN RESPONDENT(S): -------------------------- 1. THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, ERNAKULAM.

2. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM.

3. THE COMMISSIONER, COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4. DISTRICT COLLECTOR, ERNAKULAM.

5. DEPUTY TAHSILDAR (REVENUE RECOVERY), KANAYANNUR TALUK, ERNAKULAM.

6. INSPECTING ASSISTANT COMMISSIONER, REVENUE RECOVERY,COMMERCIAL TAXES, ERNAKULAM.

7. THE COMMISSIONER OF POLICE, ERNAKULAM.

8. SUB INSPECTOR OF POLICE, PALARIVATTOM POLICE STATION, PALARIVATTOM, ERNAKULAM.

9. SALES TAX OFFICER (E114, ENFORCEMENT BRANCH (A), ROOM NO.403, VIKRIKAR BAVAN, MAZGON, MUMBAI-400 010.

10. COMMERCIAL TAX OFFICER, 2ND CIRCLE, KALAMASSERY AT PALARIVATTOM. BY GOVERNMENT PLEADER SMT.LILLY K.T. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1811-2014, ALONG WITH WPC. 10476/2011, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: msv/ WP(C).No. 12748 of 2009 (K) ------------------------------------- APPENDIX PETITIONER(S)' EXHIBITS: ------------------------------------- EXT.P1: TRUE COPY OF THE NOTICE ISSUED BY THE1T RESPONDENT TO THE PETITIONER. EXT.P1(a): TRUE COPY OF THE NOTICE ISSUED BY THE1T RESPONDENT TO THE PETITIONER. EXT.P1(b): TRUE COPY OF THE NOTICE ISSUED BY THE1T RESPONDENT TO THE PETITIONER. EXT.P1(c): TRUE COPY OF THE NOTICE ISSUED BY THE1T RESPONDENT TO THE PETITIONER. EXT.P2: TRUE COPY OF THE INTIMATION ISSUED BY THE9H RESPONDENT TO THE3D RESPONDENT. EXT.P3: TRUE COPY OF THE PENALTY

ORDER
PASSED BY THE1T RESPONDENT (AY-2000-01). EXT.P3(a): TRUE COPY OF THE PENALTY

ORDER
PASSED BY THE1T RESPONDENT (AY-2002-02). EXT.P3(b): TRUE COPY OF THE PENALTY

ORDER

PASSED BY THE1T RESPONDENT (AY-2002-03). EXT.P3(c): TRUE COPY OF THE PENALTY

ORDER
PASSED BY THE1T RESPONDENT (AY-2003-04). EXT.P4: TRUE COPY OF THE PROCEEDINGS OF REVENUE DIVISIONAL OFFICER, FORT KOCHI. EXT.P5: TRUE COPY OF THE PROCEEDINGS OF THE LAND REVENUE COMMISSIONER. EXT.P6: TRUE COPY OF THE COMMUNICATION ISSUED FROM THE OFFICE OF THE10H RESPONDENT TOT HE9H RESPONDENT. EXT.P7: TRUE COPY OF THE PROCEEDINGS OF THE2D RESPONDENT. EXT.P8: TRUE COPY OF THE REVISION FILED BY THE PETITIONER BEFORE THE3D RESPONDENT (AY-2000-01). EXT.P8(a): TRUE COPY OF THE REVISION FILED BY THE PETITIONER BEFORE THE3D RESPONDENT (AY-2001-02). EXT.P8(b): TRUE COPY OF THE REVISION FILED BY THE PETITIONER BEFORE THE3D RESPONDENT (AY-2002-03). EXT.P8(c): TRUE COPY OF THE REVISION FILED BY THE PETITIONER BEFORE THE3D RESPONDENT (AY-2003-04). Msv/ -2- -2- WP(C).No. 12748 of 2009 (K) ------------------------------------- EXT.P9: TRUE COPY OF THE COMMUNICATION ISSUED FROM THE OFFICE OF THE9H RESPONDENT, ADDRESSED TO THE PETITIONER'S ASSESSING AUTHORITY. EXT.P10: TRUE COPY OF THE

JUDGMENT
IN WP(C) NO.2368/08 OF THIS HON'BLE COURT. EXT.P11: TRUE COPY OF THE COMMUNICATION ISSUED FROM THE OFFICE OF THE3D RESPONDENT. EXT.P12: TRUE COPY OF THE PROCEEDING OF THE4H RESPONDENT. EXT.P13: TRUE COPY OF SRO22602. RESPONDENT(S)' EXHIBITS: --------------------------------------- NIL //TRUE COPY// P.S.TO JUDGE. Msv/ A.K.JAYASANKARAN NAMBIAR, J.

------------------------------ W.P.(C).NO.12748 OF2009& W.P.(C).NO.10476 OF2011----------------------------------- Dated this the 18th day of November, 2014

JUDGMENT

As the issue involved in both these writ petitions is common, they are taken up together for consideration and disposed by this common judgment. For the sake of convenience, the reference to the facts and exhibits is from W.P.(C).No.12748/2009.

2. The petitioner is the proprietor of M/s.Athira Enterprises, who is an assessee under the rolls of the Sales Tax Officer, 2nd Circle, Kalamassery and registered both under the Kerala General Sales Tax Act, hereinafter referred to as the "KGST Act" and the Central Sales Tax Act, hereinafter referred to as the "CST Act". For the assessment years 2000-01, 2001-02, 2002-03 and 2003-04, the petitioner was served with notices proposing penalties under Section 45A of the KGST Act for alleged unaccounted purchases effected from Heera Petro Chemicals (P) Limited. The proposals initiated through Ext.P1 series of notices for the aforesaid assessment years subsequently

culminated in Ext.P3 series of orders of the 1st respondent, confirming the penalties on the petitioner. The petitioner, therefore, preferred revision applications before the 2nd respondent against the orders confirming penalties on it. The said revision petitions were heard by the 2nd respondent and by Ext.P7 order dated 30.11.2007, the revision petitions were dismissed. In further revision petitions preferred before the 3rd respondent, the said respondent dismissed the revision petitions filed for the assessment years 2002-03 and 2003-04 on the ground that the petitioner had not remitted the required amounts towards additional court fee under the Kerala Legal Benefit Fund for maintaining the revision applications. In the revisions filed against the penalty orders for the assessment years 2000-01 and 2001-02 however, the 3rd respondent found that, based on a clarification obtained from the office of the Assistant Commissioner of Sales Tax, Mumbai, the transactions effected by M/s.Heera Petro Chemicals (P) Limited to M/s.Athira Enterprises, Kochi had been assessed as local sales within the State of Maharashtra in the absence of any material to suggest that there was a movement of goods across the border for the purposes of levying tax on an inter state sales transaction. In Ext.P11 order that was passed by the 3rd respondent, therefore, the

penalty proceedings against the petitioner for the assessment years 2000-01 and 2001-02 were dropped, by allowing the revision petitions for those years.

3. It is relevant to note that while the proceedings by way of revisions were pending before the 2nd and 3rd respondents, the 5th respondent had initiated recovery proceedings against the petitioner, in terms of the Kerala Revenue Recovery Act, for realisation of the amounts confirmed against him by the orders of penalty passed by the 1st respondent. In connection with the said proceedings, the petitioner's property was attached and sold for an amount of Rs.22,05,000/-. This sale was later confirmed by Ext.P4 order. Although the petitioner filed a revision petition before the Land Revenue Commissioner, against the conformation of the sale, the said revision petition was also dismissed by Ext.P5 order dated 13.1.2009. It would appear that even after the sale of the property belonging to the petitioner, and realisation of amounts there from, substantial amounts still remained to be recovered from the petitioner towards the penalty amounts confirmed against him. Proceedings were therefore continued under the Revenue Recovery Act for realisation of the balance amounts and, when it was found that there was no property belonging to the petitioner to be proceeded against for realisation of the said amounts, the 4th respondent passed Ext.P12 order dated 31.3.2009 directing the arrest and detention of the petitioner in civil prison for realisation of the penalty amounts. It is against the said factual backdrop that the prayers in the writ petition preferred by the petitioner have to be examined. In the writ petition, Ext.P11 order is impugned to the extent it confirms the order of penalty for the assessment years 2002-03 and 2003-04.There is a further prayer for quashing Ext.P12 order.

4. In W.P.(C).No.10476/2011, the challenge is against the assessment orders that were passed in respect of the petitioner for the assessment years 2001-02 to 2004-05. Out of the said assessment orders, in the assessment orders pertaining to the years 2002-03 and 2003-04, the assessments have been completed by including the turnover that was the subject matter of penalty proceedings, that were eventually confirmed against the petitioner owing to the revision petitions being dismissed for non-payment of additional court fee. As a result of the addition of the turnover, in respect of which the penalty

W.P.(C).NO.10476/2011 amounts were confirmed against the petitioner, the liability of the petitioner to tax in the said assessment years has been exaggerated to a large extent. Although the petitioner is stated to have preferred appeals and stay petitions against the assessment orders before the First Appellate Authority, it is submitted that the First Appellate authority is not considering the appeals in view of the fact that the petitioner has not paid the additional court fee, by way of contribution under the Kerala Legal Benefit Fund, as a condition for maintaining the appeals. It is faced with such a situation that the petitioner impugns the assessment orders itself in the writ petition, while simultaneously challenging the validity of the notification by which the levy of additional court fee by way of contribution to the Kerala Legal Benefit Fund was introduced.

5. Counter affidavits have been filed on behalf of the respondents in both the writ petitions. The specific stand taken by the respondents is that the penalty orders, with regard to the assessment years 2002-03 and 2003-04 have attained finality with the dismissal of the revision petitions filed by the petitioner against the said orders, on account of the non-compliance with the requirement of payment of additional court fee. It is therefore contended that the revenue recovery proceedings against the petitioner, for recovery of the penalty amounts confirmed for the said years, is legal and valid and, insofar as the petitioner has not paid the amounts consequent to the demand notices served on him, the 4th respondent was legally justified in passing Ext.P12 order directing the arrest and detention of the petitioner in civil prison. With regard to the contentions in W.P.(C). No.10476/2011, it is pointed out that the assessment proceedings are separate and independent of penalty proceedings, as per the scheme of the KGST Act. The benefit, if any, obtained by the petitioner in penalty proceedings cannot automatically enure to his benefit in assessment proceedings, which will have to be considered independently. It is therefore contended that the petitioner is not justified in challenging the assessment orders before this Court in proceedings under Article 226 of the Constitution of India when he has an efficacious alternate remedy under the KGST Act for challenging the said orders. In connection with the challenge against the notification introducing the additional court fee by way of contribution to the Kerala Legal Benefit Fund, reference is made to the decision of this Court in Steel Industrials Kerala Ltd. v.

W.P.(C).NO.12748/2009 & 7 W.P.(C).NO.10476/2011 Assistant Commissioner - [2005 (4) KLT81 to contend that the challenge against the said notification has already been repelled by this Court by the said judgment.

6. I have heard Sri.K.I.Mayankutty Mather, the learned counsel appearing on behalf of the petitioner as also Smt.Lilly.K.T., the learned Government Pleader appearing on behalf of the respondents.

7. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that as regards the penalty orders that are the subject matter of W.P.(C).No.12748/2009, the proceedings initiated against the petitioner in respect of the assessment years 2000-01 to 2003-04 have culminated in Ext.P11 order passed by the 3rd respondent. By the said order, the 3rd respondent has relied on a communication obtained from the Sales tax authorities in Mumbai to find that the transactions, in respect of which the petitioner was proceeded against for the imposition of penalty, were actually subjected to the levy of sales tax in Maharashtra by treating them as intra state sales. The said communication received from the Sales tax authorities in Mumbai also W.P.(C).NO.12748/2009 & 8 W.P.(C).NO.10476/2011 reveals that there was no material available to suggest that in any of those transactions there was an inter state movement of goods necessitating the treatment of the said transaction as an inter state sales. As already noted, the 3rd respondent relied on the said communication to find in favour of the petitioner in the matter of imposition of penalty for the assessment years 2000-01 and 2001-02. Ordinarily, the said reasoning would have applied even to set aside the imposition of penalty on the petitioner for the assessment years 2002-03 and 2003-04 as well. In Ext.P11 order of the 3rd respondent however, only the imposition of penalty for the years 2000-01 and 2001-02 were set aside and this was for the reason that in respect of the other two years, the petitioner had not complied with the requirements of payment of additional court fee which was a precondition for maintaining the revision applications before the 3rd respondent. On a consideration of the peculiar factual situation in the instant case, and taking note of the precarious position in which the petitioner was during the relevant time, having lost his property in an auction sale which was part of the proceedings initiated against him for recovery of exorbitant

amounts of penalty that were confirmed against him, the alternate remedy provided under the Statute which W.P.(C).NO.12748/2009 & 9 W.P.(C).NO.10476/2011 required the petitioner to pay additional amounts by way of additional court fee to pursue the same, could not be seen as an efficacious one. The dismissal of the revision petitions filed for the said years, on the ground of maintainability, therefore appears to be harsh. In my view, since the revision petitions of the petitioner for the earlier two assessment years, the issue in which was identical to that involved in the years 2002-03 and 2003-04, were allowed by the revision authority, the petitioner ought to obtain the benefit of the said finding in the said assessment years also. I therefore, quash Ext.P11 order of the 3rd respondent, to the extent it dismisses the revision applications preferred by the petitioner against the penalty orders for the assessment years 2002-03 and 2003-04 and find that, by virtue of the orders passed by the 3rd respondent for the assessment years 2000-01 and 2001-02, the levy of penalty on the petitioner for the assessment years 2002-03 and 2003-04 also cannot be legally sustained. I accordingly quash Exts.P3(b) and P3(c) orders of the 1st respondent confirming the penalties on the petitioner for the assessment years aforementioned. Resultantly, W.P.(C).No.12748/2009 is disposed by quashing Exts.P3(b), P3(c) and P11 orders to the extent aforementioned. W.P.(C).NO.12748/2009 & 10 W.P.(C).NO.10476/2011 8. As regards W.P.(C).No.10476/2011, I find that the assessment orders passed for the assessment years 2001-02 to 2004- 05 are impugned in the said writ petition. As a consequence of my findings in W.P.(C).No.12748/2009, the assessment orders passed in the assessment years 2002-03 and 2003-04, to the extent that they confirm the addition of a turnover in respect of which penalty was imposed by the orders which I have quashed in W.P.(C). No.12748/2009, also require to be quashed to the extent they include the amounts representing the said turnover in the total turnover that was subjected to assessment. I am of the view that, insofar as the basis for the imposition of penalty for the said assessment years has been found to be non-existant by the revision authority in Ext.P11 order in W.P.(C).No.12748/2009, the turnover attributable to the said proceedings cannot form part of the turnover that is subjected to assessment in the assessment orders. I therefore quash Exts.P10 and P11 assessment orders so as to enable the Assessing Officer to pass fresh assessment orders for the said years by excluding the amounts that are covered by the penalty orders passed for the said assessment years. As regards the assessment orders for the assessment years W.P.(C).NO.12748/2009 & 11 W.P.(C).NO.10476/2011 2001-02 and 2004-05, I find that the said assessment orders do not take into account the amounts covered by any penalty order passed by the authorities under the KGST Act, save to the limited extent of including transactions between the petitioner and M/s.Heera Petro Chemicals (P) Limited [Rs.1,84,440/-] and the transaction between the petitioner and M/s.Vardhan Petro Chemicals (P) Limited [Rs.9,75,440/-] in the assessment year 2001-02. Insofar as the petitioner contends that the amounts considered in the assessment year 2001-02, also pertain to transactions that were covered by the clarification issued by the Sales tax authorities at Mumbai, I feel it would be necessary for the Assessing officer to consider this aspect also while completing the assessment against the petitioner for the said year. Thus, I quash Ext.P9 assessment order so as to enable the Assessing officer to pass fresh orders of assessment taking into account the specific contention of the petitioner, with regard to the two transactions referred to above, that they do not form part of the turnover that can be subjected to tax. As regards Ext.P12 assessment order for the year 2004-05, I do not see any reason to interfere with the same and hence the petitioner is left to pursue the alternate remedy by way of appeal against the said order. Resultantly, I quash W.P.(C).NO.12748/2009 & 12 W.P.(C).NO.10476/2011 Exts.P9, P10 and P11 assessment orders, as also the revenue recovery notices issued to the petitioner for the assessment years 2001-02 to 2003-04, so as to enable the Assessing officer to pass fresh orders of assessment in the said assessment years. The Assessing Officer shall pass fresh orders as directed within a period of three months from the date of receipt of a copy of this judgement.

9. The challenge of the petitioner against the validity of the notification introducing the additional court fee by way of contribution to Kerala Legal Benefit Fund is seen already covered against him by the judgment of this Court in Steel Industrials Kerala Ltd. v. Assistant Commissioner - [2005 (4) KLT81, and, hence, I reject the challenge against the said notification by following the judgment referred to above. Both the writ petitions are disposed as above. A.K.JAYASANKARAN NAMBIAR JUDGE prp W.P.(C).NO.12748/2009 & 13 W.P.(C).NO.10476/2011 xxx