

**(1987) 08 KL CK 0031****High Court Of Kerala****Case No:** O.P. No. 4778 of 1987-R

Joseph John

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

**Date of Decision:** Aug. 27, 1987**Acts Referred:**

- Revenue Recovery Act, 1890 - Section 7

**Citation:** (1989) 73 STC 74**Hon'ble Judges:** M. Fathima Beevi, J**Bench:** Single Bench**Advocate:** Arikat Vijayan Menon and K. Padmanaban, for the Appellant; Government Pleader, for the Respondent**Final Decision:** Allowed

### **Judgement**

M. Fathima Beevi, J.

Petitioner challenged exhibit P6 demand notice issued for payment of an amount of Rs. 29,223.22 as arrears for the period from 1971-72 to 1975-76. The petitioner had been assessed to sales tax for these years. The arrears certified for recovery under the Revenue Recovery Act was an amount of Rs. 58,205.96, which included sales tax for the aforesaid period and penal interest thereon. On 9th January, 1986 Tahsildar certified in exhibit P1 that the petitioner has already remitted Rs. 34,205.96. The balance of Rs. 24,000 had been remitted by the petitioner as per exhibits P2 to P5, the last payment being on 31st March, 1987. According to the petitioner exhibit P6 notice issued, after such payment, is illegal and the proposed action under the Revenue Recovery Act is unwarranted.

2. In the counter-affidavit filed on behalf of the second respondent it is stated that District Collector has advised for recovery by letter No. B4-52655/82 dated 23rd November, 1982 of a sum of Rs. 58,205.96 inclusive of penal interest of Rs. 10,101.73. The defaulter has remitted a sum of Rs. 34,205.96 till 9th January, 1986.

The petitioner had also remitted Rs. 24,028.00 from 20th March, 1986 to 31st March, 1987. Thus a total amount of Rs. 58,233.96 has been realised from him. It is further stated that the penal interest towards the tax was worked out only up to the date of issuance of the revenue recovery certificate, i.e., 24th September, 1982 by the assessing authority. Penal interest accrued on the tax from 24th September, 1982 till the clearance of tax arrears has also to be collected. Accordingly exhibit P6 notice was issued to the petitioner. The amount of Rs. 29,223.22 is made up of tax Rs. 8,195.22 plus penal interest of Rs. 21,028. Exhibit P6 notice is issued by the second respondent as the amount recoverable being balance tax and penal interest.

3. The admitted facts thus revealed that as against the demand for payment of tax and penal interest up to 24th September, 1982 the petitioner had remitted the full amount of Rs. 58,233.96. This amount was liable to be adjusted towards the tax as well as the penal interest that accrued due up to 24th September, 1982. When steps are taken under the Revenue Recovery Act and demand notice is issued u/s 7, the defaulter is liable to pay the amount in arrears together with the interest thereon and the cost of process. If the interest accrued subsequent to the date of demand is not worked out and paid, the recovery officer is entitled to proceed for recovery of the same in the course of the proceedings. However, when payments are made by the defaulter and such payments could be appropriated either towards the tax or the interest that accrued due and the interest for the subsequent period is computed it is only fair and proper that the defaulter is given an opportunity to be heard regarding the quantum.

4. Penal interest is levied u/s 23(3) of the Kerala General Sales Tax Act which provides that if the tax assessed or any other amount due under the Act is not paid by any dealer within the time specified therefore in the notice of demand the dealer shall pay by way of penal interest in the manner prescribed, in addition to the amount due, interest at the specified rate. Rule 31 of the Kerala General Sales Tax Rules prescribes the mode of payment of penalty. The penal interest can be paid either separately or along with the tax. Sub-rule (2) provides that:

The assessing authority concerned may calculate the penal interest payable under Sub-section (3) of Section 23 from time to time and may issue a notice in form 24. On receipt of the notice the dealer shall pay the penal interest due in the manner specified in Sub-rule (1).

The explanation further states that :

The dealer or other person concerned shall however be liable to pay the penal interest under Sub-section (3) of Section 23 whether he receives a notice under this Sub-rule or not.

This rule postulates the contingency of a dispute regarding the computation and cautions that it is desirable to issue a notice to the dealer on calculating the interest from time to time in the prescribed form. Form No. 24 should contain the particulars

of tax assessed, the date fixed for payment and the amount of penal interest imposed. These particulars are furnished in order that the dealer is made known about his liability and persuaded to pay before coercive steps are taken. If an obligation is cast on the assessing authority to compute the interest and give intimation to the assessee before steps are taken for recovery as arrears of land revenue under the provisions of the Revenue Recovery Act, in the course of the recovery proceedings the defaulter is entitled to be served with a notice by the assessing authority in a case where the amount certified for recovery has already been remitted. The rules contemplate a demand by the assessing authority. A notice issued by the village officer without further intimation from the assessing authority and without affording the defaulter an opportunity of being heard in the matter of computation, is opposed to the rules of natural justice and cannot be sustained. In view of the liability of the defaulter to pay the interest even in the absence of a demand by the assessing authority when a demand notice is issued u/s 7 of the Revenue Recovery Act, there is nothing improper on the part of the village officer in realising the penal interest after quantification of the same with notice to the defaulter. Exhibit P6 demand had been issued by the second respondent, the village officer, without giving that opportunity and is therefore in violation of the principles of natural justice. It is liable to be quashed without prejudice to any proceedings being taken for recovery of interest computed after giving the defaulter an opportunity of being heard.

The original petition is accordingly allowed, quashing exhibit P6 subject to the direction that it shall be open to the respondents to proceed with the recovery proceedings for the balance payable towards tax and penal interest, if any, after giving the petitioner an opportunity of being heard. There shall be no order as to costs.