
(1987) 08 KL CK 0041

High Court Of Kerala

Case No: T.R.C. No. 17 of 1985

Deputy Commissioner
of Sales Tax (Law),
Board of Revenue
(Taxes)

APPELLANT

Vs

S.V. Natarajan Chettiar

RESPONDENT

Date of Decision: Aug. 11, 1987

Acts Referred:

- Kerala General Sales Tax Act, 1963 - Section 14, 14(7)

Citation: (1988) 69 STC 153

Hon'ble Judges: K.S. Paripoornan, J; K. Sreedharan, J

Bench: Division Bench

Advocate: Government Pleader, for the Appellant; Arikkat Vijayan Menon, for the Respondent

Judgement

K.S. Paripoornan, J.

The Revenue is the petitioner herein. The respondent is an assessee under the Kerala General Sales Tax Act (in short, "the Act"). The matter involved herein relates to the assessment year 1983-84. The assessee (respondent) is a general merchant at Attappady. He was not submitting monthly returns, nor paying tax. From the declarations available in the check post, the assessing authority came to know that the respondent (assessee) had effected sales of groundnut outside the State. Notices were served on the assessee to file returns for June and July, 1983. The taxable turnover for these two months was determined at Rs. 75,000 and Rs. 80,000. The assessee filed a nil return for June and July, 1983. He did not file the returns along with the proof of payment of tax due before the 20th of the succeeding month for the period, June to September, 1983. This resulted in the assessing authority completing the assessments for August, September and October, 1983 on a turnover of Rs. 90,400, Rs. 1,12,250 and Rs. 50,000 respectively for the above months. Thereafter the Sales Tax Officer served a notice on the respondent-assessee, as to why a demand for furnishing additional security for Rs.

20,000 should not be made. The notice was returned with the postal, endorsement that the addressee (assessee) refused to receive the communication. Thereafter the Sales Tax Officer passed an order on 13th December, 1983 and required the assessee to furnish security under Rule 6(2)(a) of the Kerala General Sales Tax Rules for Rs. 20,000. The assessee filed an objection for the said proceedings. He also stated that no additional security can be demanded from him. The Sales Tax Officer served a notice dated 31st December, 1983, on the assessee proposing to cancel the registration certificate for failing to furnish the security ordered by proceedings dated 13th December, 1983. The assessee filed his reply dated 4th January, 1984. Thereafter the Sales Tax Officer passed an order dated 12th January, 1984 cancelling the certificate of registration granted to the assessee. The appeal filed by the assessee before the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax was dismissed by order dated 31st July, 1984. In second appeal, the Appellate Tribunal reversed the aforesaid orders of the lower authorities. The Appellate Tribunal held that the order passed by the Sales Tax Officer dated 12th January, 1984 cancelling the certificate of registration of the dealer is invalid for the following reasons:

- (1) There is no mention in the order regarding the basis of the estimate for the estimated tax.
- (2) There was denial of reasonable opportunity to the assessee before cancelling the certificate of registration, invoking the powers vested in the assessing authority u/s 14(7) of the Act.
- (3) Non-filing of the returns or non-remittance of the tax for a few years cannot form "good and sufficient reasons" for cancellation of the certificate of registration within the scope of Section 14(7) of the Act.

Aggrieved by the said order of the Appellate Tribunal, the Revenue has come up in revision.

2. We heard counsel for the Revenue, as also counsel for the respondent (assessee), Mr. Arikkat Vijayan Menon. It is agreed that the "prescribed authority", specified in Section 14(7) of the Act is the concerned "assessing authority". It is common ground that the assessee did not file the returns for the months, June to October, 1983. On a perusal of the declaration forms filed in the check post, the assessing authority came to know that the assessee was effecting sales of groundnut outside the State. The assessing authority, after issue of notices, determined the taxable turnover for June to September, 1983. He passed an order on 13th December, 1983, whereby he required the assessee to furnish security for an amount of Rs. 20,000. The events leading to the said order and the contents thereof, as summarised by the Appellate Tribunal in paragraph 3 of its order dated 12th September, 1984, are as follows :

In this order the Sales Tax Officer has pointed out that the appellant had not furnished monthly returns in form 9 for the months of August, September and October, 1983 in spite of the fact that he had effected large scale inter-State sales of groundnut as is borne out by check post declarations received from the check post at Anakkatty. It is also further stated that the appellant was in arrears of sales tax amounting to Rs. 27,320.06 which was pending collection under the Revenue Recovery Act. Therefore, the Sales Tax Officer held that for proper realisation of the legitimate revenue due to the Government the dealer should furnish security as laid down in Clause (a) of Sub-rule (2) of Rule 6 of the Kerala General Sales Tax Rules for an amount of Rs. 20,000. In the order it is stated that the appellant was given an opportunity of being heard and of filing his objections with supporting evidences, by a notice issued by the Sales Tax Officer and that the said notice was returned unserved with a postal endorsement to the effect that the addressee had refused to receive the communication. The Sales Tax Officer, therefore concluded that the appellant was evading his tax liability and that the circumstances justified insistence on furnishing a security for an amount of Rs. 20,000. Accordingly, an order to this effect was passed on 13th December, 1983.

The assessee applied for time. He also questioned the basis for demanding additional security. Even so, the Sales Tax Officer issued a notice dated 31st December, 1983 to the assessee, proposing to cancel the certificate of registration. In his reply dated 4th January, 1984, the assessee stated as follows:

As per the above referred notice, you have given some reasons for the cancellation of my registration certificate. You have stated in the notice that I am not in the habit of submitting monthly returns every month which are due on or before the 20th of the succeeding months. The non-submission of monthly returns are not wilful. Due to my illiteracy and illness I did not submit the returns for the months of June, 1983 to October, 1983. I request you to allow me some time for filing the monthly returns from June, 1983, to October, 1983 and also for the payment of the relevant tax.

You have stated in your notice that I have transported groundnut through Anakkatty Check Post. I have not at all suppressed the movement of goods from my place through the Anakkatty Check Post. As far as I am concerned I am ready to pay the legitimate tax. It means that there is no evasion of tax even though there is late payment of tax and submission of returns. The Government is secured the tax dues from me. You have also stated in your notice that I have to pay a sum of Rs. 27,320.06 by way of R. R. and the same pending. I got an order from the Honourable Minister of Revenue for the payment of above dues in instalments. So it is irrelevant to mention about that arrears here.

For your notice (proceedings) dated 13th December, 1983, I have sent a reply dated 31st December, 1983. Now you have stated that you have ordered to remit the security of Rs. 20,000 as per your proceedings dated 13th December, 1983. But that seems to be only a notice and not an order. So it is incorrect to act as per that proceedings. Please read my reply dated 31st December, 1983 so that the position will be clear. You have not at all

mentioned in your notice about the section and sub-section under which you are going to cancel my registration certificate. I therefore request you not to take any action as per your notice cited above.

Thereafter the assessing authority passed an order dated 12th January, 1984 u/s 14(7) of the Act. The relevant portion of it is extracted as follows :

Sri S.V. Natarajan Chettiar, General Merchant, P.C. Thavalam, Attappady is a registered dealer bearing Kerala General Sales Tax Registration No. 31180181 (old No. 59). He has not been in the practice of submitting the monthly returns in form 9 and paying the legitimate tax due therein. At the latest he has not submitted the monthly returns of June to November, 1983, even though the said returns together with the proof for payment of legitimate tax due thereon was due in this office on or before the 20th of each succeeding months. At the same time it was evident from the check post declaration received from the sales tax check post, Anakkatty, that the dealer was having inter-State sales of groundnut in large volume during the months of August, September, October and November, 1983. Tax due involved on these sales works out huge. In addition he is in arrears of sales tax relating to previous years.

In the circumstances it was found highly necessary that the dealer should furnish adequate security for the purpose of proper realisation of the revenue due to Government. Accordingly the dealer was, as per this office proceedings in 31180181/83-84 dated 13th December, 1983 (read as 1st paper above) required to furnish security as laid down under Clause (a) of Sub-rule (2) of Rule 6 of the Kerala General Sales Tax Rules, 1963 for Rs. 20,000 (rupees twenty thousand only). But he failed to do so.

3. From a resume of the above, the proceedings of the Sales Tax Officer dated 13th December, 1983, the further notice dated 31st December, 1983 and the final order dated 12th January, 1984, it is evident, that in the proceedings requiring the assessee to furnish additional security, the officer has clearly indicated about the failure of the assessee to furnish the returns from August to October, 1983 and also the fact that the assessee was in arrears of sales tax amounting to Rs. 27,320 which was pending collection under the Revenue Recovery Act. Admittedly, the tax due on the turnover determined by the officer himself for the period June to September, 1983 in the sum of Rs. 75,000, Rs. 80,000, Rs. 90,400, Rs. 1,12,250 and Rs. 50,000 will come to a very substantial figure. In addition thereto, there were arrears of sales tax amounting to Rs. 27,320.06. These facts are not disputed. In these circumstances, we are unable to agree with the Appellate Tribunal that there is no mention of the basis of the estimate in the body of the order passed under Rule 6. A reading of the order dated 13th December, 1983, as a whole, provides sufficient basis for the estimate. So the first ground on which the Appellate Tribunal cancelled the order of the officer dated 12th January, 1984 falls to the ground.

4. The second ground on which the Appellate Tribunal cancelled the order of the Sales Tax Officer dated 12th January, 1984, is on the basis that there was a denial of reasonable opportunity to the assessee before passing the order u/s 14(7) of the Act. After passing the order dated 13th December, 1983, requiring the assessee to furnish additional security, the assessing authority served a notice on 31st December, 1983 proposing to cancel the certificate of registration. The assessee filed a reply dated 4th January, 1984. The order cancelling the registration was passed on 12th January, 1984, after providing an opportunity to the assessee to put forward his case. In these circumstances, we are unable to hold that there was denial of reasonable opportunity to the assessee to put forward his plea before the order u/s 14(7) of the Act was passed. The second ground for cancelling the order dated 12th January, 1984 also falls to the ground.

5. Finally, the Appellate Tribunal has also stated that the non-filing of the returns or non-remittance of the tax for a few years cannot form "good and sufficient reasons" for cancellation of certificate of registration u/s 14(7) of the Act. Section 14(7) of the Act is as follows :

14. Procedure for registration.-

* * *

(7) The prescribed authority shall have power, for good and sufficient reasons, to cancel, modify or amend any registration certificate issued by it.

According to the Appellate Tribunal, the assessing authority has got sufficient powers to finalise an assessment to the best of his judgment, where failure to file returns is noticed. It is also stated that coercive recovery proceedings can be taken for non-remittance of tax arrears. In this perspective, the Appellate Tribunal was of the view that there was no sufficient reason to cancel the certificate of registration u/s 14(7) of the Act. We are unable to appreciate the reasoning and conclusion of the Appellate Tribunal in this regard. The meaning of the words "good and sufficient reasons" depends upon the context. In the context of the Sales Tax Act, the words "good and sufficient reasons" occurring in Section 14(7) should receive a reasonable interpretation, which will effectuate and render meaningful the levy, assessment and recovery or collection of the tax assessed or due under the Act. The said words should not be construed in any restricted sense. Section 14 is a machinery provision. It should receive such an interpretation which will render it possible to achieve effective, speedy and proper implementation of the provisions of the Act and in particular appropriate measures to safeguard the interests of the Revenue. Sales tax is levied on the turnover of a dealer. In substance, it is an indirect tax. Ordinarily a dealer (assessee) can pass on the tax levied to the ultimate consumer. The dealer has the facility to collect or pass on the tax levied on his turnover. In such circumstances, when a dealer fails to submit the returns together with the proof of payment of tax due, as required by law, before the 20th of the

succeeding month, the assessing authority is in duty bound to invoke appropriate provisions of the Act for enforcing effective obedience to the statutory requirements and to safeguard the amount due to the Revenue. In this case, he assessed the dealer for the months of June to October, 1983. Though the dealer did not file the returns, the assessing authority came to know from the declarations in the check post that the dealer was effecting sales of groundnut outside the State. The assessing authority also noticed that the dealer is in arrears of sales tax in the sum of Rs. 27,320 for earlier years. On these grounds, after notice to the dealer, he passed an order on 13th December, 1983, whereby he required the dealer to furnish additional security for Rs. 20,000. The assessee failed to comply with the same. So the assessing authority proposed, by notice dated 31st December, 1983, to cancel the registration. After affording sufficient opportunity to the dealer, he passed the final order cancelling the certificate of registration on 12th January, 1984. It was the duty of the assessing authority to bring to tax the turnover of the dealer as also to take appropriate and effective measures to see that the tax assessed and due is secured to the Revenue. In that behalf, in this case, the assessing authority initiated proceedings and required the dealer to furnish additional security and only on his failure to do so, he cancelled the certificate of registration u/s 14(7) of the Act. It should be remembered that, it is only the certificate of registration, which will enable the dealer to collect or pass on to the customer sales tax due on the turnover. On the above facts, we are satisfied that in this case, prima facie, there were "good" and "sufficient" reasons for the prescribed authority to invoke Section 14(7) of the Act by initiating proceedings to cancel the registration certificate issued to the dealer (assessee). The fact that the assessing authority has got power to finalise the assessment to the best of his judgment in cases where the returns were not filed or that he has got the power to resort to coercive recovery proceedings for realising tax arrears cannot, in any way, deter the assessing authority to invoke the powers vested in him u/s 14(7) of the Act in appropriate cases. The power vested in the officer u/s 14(7) is prima facie an enabling one. But the discretion is vested in a statutory authority who is bound to see that the objects of the provisions of the statute read as a whole, are properly effectuated and implemented. Since the power is vested in the assessing authority u/s 14(7) of the Act for public good, we are of the view that the power vested in the officer is in the nature of a compellable duty in circumstances where the exercise of the power is necessitated or warranted. We are further of the view that regard being had to the nature of sales tax, if a recalcitrant or contumacious dealer, without justifiable reason, either fails to file the returns within the time allowed by law or fails to remit the admitted tax due within the specified period, the assessing authority is bound to take serious notice of the same and will be justified in invoking the powers vested in him u/s 14(7) of the Act. Looked at from the point of view of public policy and public interest, involved in the matter, we hold that a compellable public duty is cast in the prescribed authority u/s 14(7) of the Act to take appropriate measures, specified therein, in the case of a recalcitrant or contumacious dealer, who, without justifiable reasons, fails to file the returns in time or commits default in the payment of admitted tax due within the specified period. The prescribed authority or assessing authority is bound to be vigilant, since he is the

watch-dog of the revenue and cannot be unmindful of the onerous and heavy duty and responsibility cast on him. At the same time, we should hasten to add, that the assessing authority should not exercise the powers vested in him u/s 14(7) of the Act in a casual or light-hearted or mechanical manner. This crucial aspect should be remembered.

6. The words "good and sufficient reasons" in the context of Section 14(7) of the Act only mean an "appropriate" or "suitable" or "satisfactory" or "fit" and "enough" or "adequate" reasons, for invoking Section 14(7) of the Act. We have no doubt in our mind that in the case of a recalcitrant or contumacious dealer (assessee), who without justifiable reasons, fails to file the returns within the specified time or fails to remit the admitted tax due, it is only "appropriate" or "fit" and "enough" or "adequate" reason to invoke the provisions of Section 14(7) of the Act. The Appellate Tribunal committed a grave error of law in holding that the delay in filing the returns for a few months or failure to remit the admitted tax due cannot be regarded as "sufficient reason" for cancellation of certificate of registration. The third and the final reason given by the Appellate Tribunal to cancel the order of the Sales Tax Officer, dated 12th January, 1984, also falls to the ground.

7. We are satisfied that the grounds on which the Appellate Tribunal cancelled the order of the Sales Tax Officer, dated 12th January, 1984, are unsustainable. Ordinarily, we would have set aside the order of the Appellate Tribunal and restored the order of the Assistant Commissioner of Sales Tax dated 31st July, 1984 confirming the order of the Sales Tax Officer, dated 12th January, 1984. But we find from the final order passed by the assessing authority dated 12th January, 1984, that the objections filed by the assessee to the cancellation of registration certificate, dated 4th January, 1984 have not been adverted to nor disposed of in accordance with law. The dealer has stated that he failed to submit the returns from June, 1983 to October, 1983 due to "illiteracy" and "illness". He prayed for time to file the returns and pay the tax. With regard to the arrears of sales tax, amounting to Rs. 27,320, advised for revenue recovery, the dealer has stated in his objections dated 4th January, 1984 that the Honourable Minister for Revenue has passed an order for payment of the dues in instalments. Whether the instalments were paid in time and whether there was any default clause in the order passed by the Honourable Minister, is anybody's guess. These aspects have not been adverted to, nor adjudicated upon in the final order passed by the assessing authority, dated 12th January, 1984. Before passing an order u/s 14(7) of the Act, the assessing authority should have applied his mind to the matter in issue and should have disposed of the objections of the dealer. He should not act mechanically or light-heartedly or in a casual manner since the effect of the exercise of the power will result in dire consequences to the assessee (dealer). It is not evident from a perusal of the order, dated 12th January, 1984, that the objections filed by the assessee dated 4th January, 1984 were either adverted to or disposed of in accordance with law. This is a fundamental infirmity in the order passed by the assessing authority dated 12th January, 1984. On this sole ground, we hold that the order passed by the assessing authority dated 12th January, 1984 cancelling the certificate of registration is invalid. The order of affirmance

passed by the Appellate Assistant Commissioner would equally be infirm. The Sales Tax Officer, Mannarghat, is directed to restore the proceedings to his file and dispose of the matter in accordance with law and after adverting to the objections filed by the assessee dated 4th January, 1984.

The tax revision case is disposed of as above. There shall be no order as to costs.