Kanjinghat Bros. Vs State of Kerala and Others

Court: High Court Of Kerala

Date of Decision: Feb. 2, 1993

Acts Referred: Kerala General Sales Tax Act, 1963 â€" Section 27, 36, 47(1)

Hon'ble Judges: T.L. Viswanatha Iyer, J

Bench: Single Bench

Advocate: T.L. Ananthasivan, for the Appellant; T.K. Nambiar, Spl. Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

T.L. Viswanatha Iyer, J.
The challenge is to the proceedings Ext. P-1 of the Intelligence Officer, Agricultural Income Tax and Sales Tax,

Ernakulam, confirmed in revision by the Deputy commissioner by the proceedings Ext. P-2 and by the Board of Revenue by the proceedings Ext.

P-3. By the said proceedings the permission accorded to the Petitioner to compound departmentally the offences of violation of Section 27 of the

Kerala General Sales Tax Act, 1963 (the Act) for a sum of Rs. 25,451 stands accepted and confirmed. The facts leading to the case are as

follows.

2. The Petitioner is a firm of glass merchants in Broadway, Ernakulam. There was an inspection of the shop on 19th May 1988 when it is stated

that unaccounted purchases of demand drafts made by the Petitioner from the Lord Krishna Bank, Ernakulam were discovered. According to the

Intelligence Officer these drafts aggregate Rs. 2,12,170.74 during the year 1986-87 and were in favour of Sreekala Glass works, Madras and

Sree Vallabha Glass works, Madras from whom the Petitioner was purchasing glasswares. The purchase of these drafts had not been entered in

the account books of the Petitioner. The matter was posted for hearing on 23rd May 1988 when the Petitioner"s partner by name Dinesh

accepted the purchase of these drafts which were sent to the outside parties against purchases. He admitted that the verification of the accounts

revealed that the Petitioner had not accounted these demand draft; in the books of accounts and thereby the Petitioner failed to maintain true and

complete accounts of its business transactions for the year, which is an offence punishable under the Act. He therefore requested that the offence

may be compounded departmentally in lieu of prosecution. This request for compounding appears at page 115 of the file produced before me. The

Intelligence officer allowed the request fixing the compounding fee at Rs. 25,461. The basis of this figure of Rs. 25,461 is stated in the order which

he passed subsequently on 29th February 1989 (Ext. in which he mentioned that the non-accounting of the demand drafts leads to the ""fact"" that

the dealer had not accounted his inter-state purchases to the tune of Rs. 2,12,170.74). This in turn leads to non-accounting of the sales pertaining

to the purchases. Thus the Petitioner has failed to maintain true and complete accounts of its business transactions and thereby contravened the

provisions of Section 27 of the Act. Rs. 25,461 is the tax effect on the suppressed purchase turnover, that is the value of the unaccounted demand

drafts. Rs. 25,461 was therefore fixed as the compounding fee which had been paid by the Petitioner on 23rd May 1988.

3. Petitioner challenged this order Ext. P-1 in revision before the Deputy Commissioner with the plea that the case was one which fell u/s 47(1)(b)

of the Act and not u/s 47(1)(a) as assumed by the Intelligence Officer and therefore the compounding fee imposed was excessive. Section 47(1)

(a) relates to cases where the offence consists of evasion of tax payable in which case the compounding fee may be a sum equal to the amount of

tax payable subject to a minimum of Rs. 100 and a maximum of Rs. 1,00,000. Other cases are covered by Clause (b) of the section in which case

the compounding fee may be a sum of money not exceeding Rs. 5,000. The Petitioner''s case was accordingly that the compounding fee should not

exceed Rs. 5,000 as this was not a case of evasion of tax.

4. At this juncture it is necessary to remember that according to the Petitioner the demand drafts were purchased for payment to certain dealers in

Madras, with funds obtained from the partners. The firm itself had no funds in those days and therefore appropriate entries were made in the

accounts relating to these amounts as and when funds became available. There is no case of any suppression of turnover at all and consequently no

question of evasion of tax. The case was only one of non-maintenance of accounts truly as and when the transactions occurred and therefore the

case fell only u/s 47(1)(b) with a maximum compounding fee of Rs. 5,000.

5. The Deputy Commissioner however dismissed the revision in the view that he need to go into the merits as the Petitioner had voluntarily

admitted the offence and applied for compounding. He therefore dismissed the revision petition. This was confirmed in further revision by the

Board of Revenue by the proceedings Ext. P-3.

6. The limited relief claimed by the Petitioner is that the compounding fee fixed in excess of Rs. 5,000 u/s 47(1)(a) is invalid inasmuch as there was

no evasion of tax involved. The Petitioner is not challenging the order accepting the compounding, but only the quantum of penalty geared to

Section 47(1)(a). The Government Pleader on the other hand submits that whatever be the nature of the contention, the Petitioner had no right to

challenge the order Ext. P-1 in revision or further revision having regard to the decision of this Court in Sri Sastha Trading Co. v. State of Kerala

1991 (2) KLT 875.

7. Since neither the Board of Revenue nor the Deputy Commissioner have considered the matter in detail except with reference to the request for

compounding, I am not dealing with the other aspects raised by the Petitioner based on the various decisions in Kathiresan Yarn Stores v. State of

Tamil Nadu 1978 (42) S.T.C. 121, State of Tamil Nadu v. Thangadurai 1983 (52) S.T.C. 279 and Sudhi v. Intelligence Officer 1992 (85) S.T.C.

337. I am only concerning myself with the question whether the Deputy Commissioner or the Board of Revenue should have dealt with the

question of quantum of penalty, whether it was u/s 47(1)(a) or 47(1)(b).

8. It is true that the Petitioner cannot now go back on the offer for compounding made by its partner on 23rd May 1988. In fact the Petitioner

does not have any such contention, the limited contention being that the penalty should have been geared to Section 47(1)(b) and not to Section

47(1)(a). The decision in Sri Sastha Trading Co."s case 1991 (2) KLT 875 only says that a person who has made an offer for compounding has

no right of revision u/s 36 ignoring the compromise entered into. What this Court evidently intended was that the Assessee cannot go behind the

offer made by him in his compounding application. So far as the Petitioner''s case is concerned, the admission or agreement in their compounding

application was only that they had not accounted for the demand drafts in their books of accounts and thereby failed to maintain true and complete

accounts of the business transactions. Nowhere is it admitted in the application that they had suppressed purchases or sales or that they had

evaded payment of tax. If this be the position, it was incumbent on the Intelligence Officer to go into the question and render a finding whether the

case fell under Clause (a) or Clause (b) of Section 47(1). Such a finding was rendered only long afterwards by Ext. P-1 on 22nd February 1989,

though the amount was fixed on 23rd May 1988 and paid by the Petitioner. When the Petitioner has not accepted that they evaded payment of

tax, but only accepted the non-maintenance of true and correct accounts by including the demand drafts therein, it could not be said that they had

agreed that the case was one of evasion of tax falling u/s 47(1)(a). An offer of compounding is the admission of an offence, and therefore it should

be strictly limited to the actual admission made and no more. It cannot be stretched inferentially to such an extent as to preclude challenge to the

inferences made from the offer of compounding. If that be so, the order of the Intelligence Officer""is one liable to be challenged u/s 36, on the

limited question of the quantum of compounding fee and as to whether it fell under clause or Clause (b) of Section 47(1). The decision of the

Karnataka High Court in S.V. Bagi v. State of Karnataka 1992 (87) S.T.C. 139 relied on by the learned Government Pleader does not militate

against this conclusion of mine. It is clear that that decision was also concerned with the terms of the offer made by the Assessee on the acceptance

of which it was held that the Assessee cannot subsequently turn round and challenge it. This is evident from the following passage at page 143:

There is no compulsion upon him to make such offer. He can make it if he is assured of the possibility of being found guilty of the offence and upon

satisfying himself that what he offers is within the prescribed parameters and that he to whom he makes the offer is the prescribed authority for the

purpose. Once the offer is made it is for the prescribed authority to determine whether the offence should be compounded and, if so, whether it

should be compounded for the amount offered. No doubt, it would be open to the prescribed authority to suggest such other sum as in its view

would be appropriate, in which case it would be for such person to agree to pay such other sum or not. In our view, the process of compounding

is completed only when the money that is agreed upon actually changes hands.

What the Karnataka High Court stated was that once the offer is made for payment of a certain sum of money as compounding fee the Assessee

cannot subsequently challenge the same by way of revision. That is not the case here. The Petitioner did not offer to make payment of any sum of

money, but only for compounding for not maintaining the accounts truly or correctly. That is far from saying that the Petitioner had agreed that the

case fell u/s 47(1)(a) and not under the other clause. That matter was still open for consideration and the Petitioner was entitled to challenge the

order Ext. P-1 on that ground. The fact that the amount specified by the Intelligence Officer was paid does not imply acceptance of the

compounding at that amount, when the terms of the offer of compounding were specific and related only to non-maintenance of true and correct

accounts.

9. None of the authorities has considered the question whether the case fell u/s 47(1)(a) of 47(1)(b).

10. Accordingly I quash Exts. P-1 to P-3 and direct the Intelligence Officer to go into the question whether the case of the Petitioner fell under

Sub-section (1)(a) or (1)(b) of Section 47 and decide the quantum of compounding fee in the light of the finding rendered by him.

The Original Petition is allowed to the above extent. There will be no order as to costs.