

Kerala High Court

D. Gopalakrishna Bhat vs The State Of Kerala on 26 September, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

ST.Rev..No. 397 of 2006()

1. D. GOPALAKRISHNA BHAT,
... Petitioner

Vs

1. THE STATE OF KERALA.
... Respondent

For Petitioner :SRI.RAJESH NAMBIAR

For Respondent : No Appearance

The Hon'ble the Chief Justice MR.H.L.DATTU
The Hon'ble MR. Justice A.K.BASHEER

Dated :26/09/2008

O R D E R

H.L.DATTU, C.J. & A.K.BASHEER, J.

S.T.Rev.No.397 of 2006

Dated, this the 26th day of September, 2008

ORDER

H.L.Dattu, C.J.

This Sales Tax Revision is directed against the orders passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench, Kozhikode in T.A.No.270 of 2004 dated 28th April, 2005.

(2) Petitioner is engaged in the sales of the water supply and sanitary fittings including motor pumps, compressors, etc. (3) The returns filed by the assessee for the assessment year 1999-2000 was not accepted by the assessing authority and accordingly relying on the check post declaration, has completed the best judgment assessment as provided under Section 17(3) of the Kerala General

Sales Tax Act, 1963 ('the Act' for short) and has made certain additions towards the probable omissions and suppressions.

(4) Aggrieved by the said order, the assessee had filed first appeal before the first appellate authority. The first appellate authority while rejecting the appeal has concurred with the findings and conclusions reached by the assessing authority.

S.T.Rev.No.397 of 2006 (5) Inter alia, questioning the correctness or otherwise of the orders passed by the first appellate authority, the assessee had filed second appeal before the Sales Tax Appellate Tribunal in T.A.No.270 of 2004. The Tribunal by its orders dated 28.4.2005 has rejected the assessee's appeal.

(6) Being aggrieved by the aforesaid orders, the assessee is before us in this Sales Tax Revision.

(7) The assessee has framed the following questions of law for our consideration and decision. They are as under:

"i) Whether the order of the Sales Tax Appellate Tribunal is correct on law, facts and circumstances of the case?

ii) The petitioner stated case before the Appellate Tribunal was that the petitioner was in possession of the book of accounts and he was prevented from producing the same before the assessing authority by reason of ill health and he had requested for an opportunity for production of the same. Has not the Tribunal erred in law in sustaining the assessment order without giving an opportunity to the petitioner to produce the books of accounts?

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iii) Form No.27B declarant ought to have been put to the test of cross examination and Section 30B(4) proceedings should have been initiated against the alleged consignor. The tribunal did not apply its mind to this specific contention of the petitioner raised before it. Is the finding of the tribunal ignoring relevant contentions of the petitioner and based on irrelevant considerations, sustainable on law, facts and circumstances of the case?

iv) The Tribunal ought to have found that the additions made by the assessing authority are highly excessive, arbitrary and have no rational nexus with the defects noted. Has not the tribunal grossly erred in law and on facts in sustaining the additions made by the assessing authority?

(8) The order of assessment passed by the assessing authority for the assessment year in question is on estimation basis.

(9) Time and again the apex Court has observed that in exercise of the powers of this Court under Section 41 of the Act, it can only look into whether the Tribunal has failed to decide a question of law

or has erroneously decided a question of law.

(10) The Supreme Court in the case of Commissioner of Sales Tax Madhya Pradesh Vs. H.M.Esufali H.M.Abdulali {1973 (32) STC 77} has stated as under:

S.T.Rev.No.397 of 2006 "The reassessments were valid. From the circumstance that the assessee had dealings outside the accounts of the value of Rs.31,171.28 for 19 days, it was open to the officer to infer that the assessee had large scale dealings outside the accounts. In such a situation, it was not possible for the officer to find out precisely the turnover suppressed and he could only make an estimate of the suppressed turnover on the basis of the material before him. So long as the estimate made by him was not arbitrary and had a reasonable nexus with the facts discovered, it could not be questioned. It was wrong to hold that the officer must have material before him to prove the exact turnover suppressed."

(11) This is a case of best judgment assessment. In that best judgment assessment, the assessing authority had the advantage of verifying the records. On verification of the records, the assessing authority had found that several check post declarations received from the check post were not seen accounted in the purchase list produced by the assessee, and that in spite of repeated notices, the assessee has not produced the books of accounts before him for verification. Therefore, based on the information available, the assessing authority has completed the best judgment assessment. It is not a case where the best judgment assessment has been made without any basis whatsoever.

(12) In that view of the matter, we are of the opinion that no question of law as such would arise in this revision petition for our consideration and decision.

S.T.Rev.No.397 of 2006 (13) Therefore, while rejecting the revision petition, we confirm the orders passed by the Tribunal.

Ordered accordingly.

(H.L.DATTU) CHIEF JUSTICE (A.K.BASHEER) JUDGE vns