(2009) 11 KL CK 0011

In the High Court Of Kerala

Case No : W.A. No. 2034 of 2009

ABY Engineering and Consultants (P) Ltd. APPELLANT

Vs

Assistant Commissioner, Special Circle II, Department of Commercial Taxes, Ernakulam RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:
Contract Act, 1872 — Section 59, 60
Kerala General Sales Tax Act, 1963 — Section 55C(1)

Citation : (2011) 38 VST 545 : (2011) 38 VST 539

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K.I. Mayankutty Mather, for the Appellant; Mohammed Rafeeq, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C. N. Ramachandran Nair J.

1. This writ appeal is filed against the judgment of the learned single judge1 upholding the adjustment of payment made by the appellant towards the arrears of tax and interest due for the assessment years 1994-95 to 2000-01, first towards interest in terms of section 55C(1) of the Kerala General Sales Tax Act, 1963 (for short, "the Act") and balance amount towards tax arrears.

2. We have heard counsel appearing for the appellant and Government Pleader appearing for the respondent.

3. Section 55C, which came into force with effect from January 1, 2000, is as follows :

55C Appropriation of payment.--(1) Where any tax or any other amount due or demanded under the Act is paid by any dealer or other person, the payments so mode shall be appropriated first towards interest accrued on such tax or other amount under subsection (3) of section 23 on such date of payment and the balance available shall be appropriated towards principal outstanding, notwithstanding any request to the contrary by the dealer or any person making such payments.

(2) Notwithstanding anything contained in sub-section (1) where any dealer or other person has paid any amount towards tax or any other amount and such payment has been set off towards the principal amount prior to the coming into effect of this section, no recomputation of such payment shall be made under sub-section (1)."

4. Admittedly, the appellant was in arrears of tax for the assessment years 1994-95 to 2000-01 and they made payment on November 19, 2002. The contention raised before the learned single judge1 was that section 55C does not apply for the arrears of tax pertaining to the assessment years prior to the introduction of section 55C which came into force on January 1, 2000. In other words, the appellant''s claim is that the payments made towards arrears of tax for the period up to December 31, 1999 could not be subjected to adjustment first towards interest in terms of section 55C of the Act. Consequently, the appellant''s claim is that payment though made after January 1, 2000, should not be first adjusted towards interest, but it should be first adjusted towards the tax arrears in terms of appellant''s request. The learned single judge1 upheld the assessment made by the assessing officer for the assessment years 1994-95 to 2000-01 wherein the entire payments made by the appellant were adjusted towards the accrued interest u/s 55C of the Act. Before the learned single judge1, the appellant relied on sections 59 and 60 of the Contract Act by which the debtor is entitled to request the creditor to adjust payment against any of the debts due and if the creditor receives the payment, the request stands accepted. The learned single judge, however, rejected the contentions and upheld the assessing officer''s stand that payment made on or after January 1, 2000 is liable to be adjusted first towards interest and balance, if any, towards tax.

5. We are of the view that the provisions of the Contract Act have no application so far as the Sales Tax Act is concerned because it is a self-contained code providing for levy and collection of sales tax by the Government from dealers. The dealer, who is in arrears of tax, though is a debtor to the Government for the arrears of tax and interest, such relationship does not arise on account of contract between parties, but by virtue of operation of the provisions of the KGST Act. The provisions of the Contract Act are not applicable for the levy and collection of tax arrears which are governed by statutory provisions. Therefore, the learned single judge1 rightly rejected the appellant''s claim based on sections 59 and 60 of the Indian Contract Act.

6. The next contention raised by the appellant is that section 55C cannot apply to the arrears of tax due for the periods prior to the coming into force of the said provision, viz., January 1, 2000. We are unable to accept the contention because on the face of it, section 55C applies to all payments made on or after January 1,

2000. In fact, sub-section (2) makes it very clear that if any payment made prior to the coming into force of sub-section (1), was first adjusted towards the tax and balance towards interest, either based on the request of the dealer or otherwise, such adjustment should not be disturbed based on the provisions, viz., sub-section (1) of section 55C. What is conveyed by sub-section (2) of section 55C is that the applicability of sub-section (1) of section 55C is not with reference to the period for which arrears are paid, but reference to the date of payment made in discharge of arrears of tax and interest by the dealer. In other words, all payments made after January 1, 2000 towards the discharge of arrears of tax will be subjected to adjustment u/s 55C(1) irrespective of the year to which the arrears of tax and interest relate. We, therefore, uphold the order of the learned single judge and dismiss the writ appeal.