

(2009) 03 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition No 36928 of 2008 (U)

ABY Engineers and Consultants (P) Ltd.

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Contract Act, 1872 — Section 59, 60
Kerala General Sales Tax Act, 1963 — Section 55C

Citation : (2011) 38 VST 545

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Advocate : K.I. Mayankutty Mather, for the Appellant;

Final Decision : Dismissed

Judgement

K. M. Joseph J.

1. The petitioner is a dealer under the Kerala General Sales Tax Act, 1963 and Central Sales Tax Act 1956 ("the KGST Act and the CST Act", for short). The question arises in the context of section 55C of the KGST Act. It reads 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 made 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).

2. Section 55C was inserted with effect from January 1, 2000. The petitioner has paid sums towards assessment years 1994-95 to 2000-01. In fact, the payments were effected on the basis of a representation made by the petitioner before the honourable Minister for Finance dated November 5, 2002. Admittedly, all the payments were made after January 1, 2000. The representation filed by the petitioner before the honourable Minister for Finance is produced as exhibit P1a. It is stated in that representation that the amounts may be received towards tax.

3. The prayer in the writ petition is to issue a writ of mandamus directing the respondent to consider the judgment dated March 31, 2006 of the honourable Sales Tax Appellate Tribunal, Additional Bench I, Ernakulam in T. A. Nos. 372 and 373 of 2005 and the payment of Rs. 21,43,405 made by the petitioner may be appropriated towards the principal amount and not towards interest for the tax amount payable up to December 31, 1999 as per exhibit P3.

4. I heard learned counsel for the petitioner Sri Mayankutty Mather and learned Government Pleader. According to the petitioner, since the payments were made in relation to the assessment years 1994-95 onwards which are all prior to the insertion of section 55C of the KGST Act, the payments must be adjusted towards the tax and not towards interest. He raised two-fold submission. In the first place he would submit that sections 59 and 60 of the Indian Contract Act clearly provide that if a debtor seeks that a payment made by him be adjusted towards the principal amount and the amount is received by the creditor then the amounts should be treated as adjusted towards the principal amount. Applying the said doctrine embodied in section 59 he would argue that when the payment is made with the specific request that it should be adjusted towards tax it was incumbent on the taxing authority to comply and it is not permissible to adjust the payment against interest. The further argument which he would advance is that the payments were relatable to assessment years prior to 2000-01. The law governing each assessment is the law laid down for that year. In taxation law it is impermissible to allow a provision of law which is inserted subsequently to interfere with the working of the law which governed the particular assessment year or years, it is submitted. Since section 55C was incorporated with effect from January 1, 2000 it is imperative that the payments made in relation to the earlier assessment years be governed by the then existing law, he contends. In this regard, the learned counsel relied on the decision of the apex court in *Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal*, *Commissioner of Income Tax Vs. Ram Kumar Agarwalla and Bros. (P.) Ltd.*, *Laxmi Cement Distributors Pvt. Ltd. v. Sales Tax Officer (2), Jamnagar* [1998] 110 STC 188 (Guj), *V. V. S. Sugars v. Government of Andhra Pradesh* [1999] 114 STC 47 (SC) and *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others*, .

5. As far as the first contention is concerned I would not see much merit in the said contention. The premise of the provision is that there is one debt. Section

59 predicates existence of several distinct debts and debtor making payment with either express intimation or under circumstances showing that the payment is made in the discharge of some particular debt and payment being accepted resulting the amount being adjustable to that debt alone. In view of the decision in Industrial Credit and Development Syndicate now called M/s. Industrial Credit and Development Syndicate Now Called I.C.D.S. Ltd. Vs. Smt. Smithaben H. Patel and Others, it cannot be said that principal and interest due on a single debt or decree passed on such debt carrying subsequent interest are to be treated as several distinct debts. In fact, learned counsel for the petitioner also fairly did not pursue this contention in the light of the decision.

6. With regard to his further contention also I would not find much merit. In Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, , the assessment year was 1960-61. The court took the view that loss of the assessment year 1950-51 cannot be set off against the business income of assessment year 1960-61. The court held as follows :

It is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication. When an assessment of asses-see (carrying on business in jute manufacture) for the assessment year 1960-61 is to be made and section 24(2) is invoked, it is section 24(2) as in force in that assessment year which has to be applied. That is the provision as amended by the Finance (No. 2) Act, 1957. There is no question of the assessee possessing any vested right under the law as it stood before the amendment. The assessment for one assessment year cannot, in the absence of a contrary provision, be affected by the law in force in another assessment year. Therefore, the unabsorbed loss of Rs. 15,50,189 of the assessment year 1950-51 cannot be carried forward for more than eight years, and consequently cannot be set off against the business income of the assessment year 1960-61.

7. The other decisions are also essentially on the same lines, namely, that the law prevailing in the assessment year would govern the issue. If I analyse section 55C it consists of 2 sub-sections. Sub-section (1) clearly creates an embargo against adjusting any payments made towards the tax (principal amount) when interest is outstanding and the amount is to be appropriated towards interest and the balance available alone shall be appropriated towards principal outstanding notwithstanding any request to the contrary by the dealer or any person making such payments. Subsection (2) starts with a non obstante clause and provides that notwithstanding anything provided in the earlier provision in sub-section (1) if any amount has been set off towards principal amount on the basis of any payment made towards tax or any other amount then no recomputation of the payment is to be made under sub-section (1). In other words, but for the non obstante clause contained in sub-section (2) every payment which was made prior to coming into force of section 55C and which was adjusted towards principal would have to be recomputed and amounts

appropriated towards interest and the balance alone towards the principal. It is this eventuality which was avoided by insertion of sub-section (2). The facts of this case are to be noted. Admittedly, all payments were made after January 1, 2000. The words of section 55 are clear and unambiguous, namely, if any payment is made it has to be appropriated towards interest accrued on such tax or other amount and the balance available is to be appropriated towards the principal amount. The words "tax" and "principal amount" appear to be used interchangeably. I take note of the fact that there is no merit in the contention raised by the petitioner on the basis of section 59 of the Indian Contract Act. As I have already noted, the learned counsel for the petitioner did not pursue the said contention. It is the provisions of section 59 which contemplate adjustment of amounts towards such as debt when a request is made and payment is received. When the said provision admittedly is not applicable in respect of payment of principal and interest I fail to see on what principle the learned counsel can urge that even prior to section 55C being incorporated there was a legal right to insist that in view of the request made, the amount received has to be appropriated towards the amount as requested.

8. Sub-section (2) consists of two parts. It speaks of payments made by the dealer and further setting off of the amounts towards principal amount. In other words, the mere fact that the payment is made earlier to the enforcement of section 55C by itself would not result in any shield against recomputation. It further requires the actual appropriation by an officer towards the principal amount. By necessary implication it means that even prior to section 55C if payment is made it was certainly open to the officer to adjust it against interest. In fact, the petitioner may not have the right to contend that even prior to section 55C there was a legal right to have the amount appropriated on a mere request to demand for tax. In fact, the language used in section 55C as I have already noted embraces the word "principal". I think this would answer the contention of the learned counsel for the petitioner that being taxation law it has to be construed strictly and there can be no scope for interpretation. I would think that, on the whole, neither contention of the petitioner would lie. The writ petition fails, and it is dismissed.