
(2006) 03 KL CK 0009

In the High Court Of Kerala

Case No : Writ Appeal No's. 1278 and 1279 of 2003

Alukkas Jewellery

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 7(1)

Citation : (2009) 1 KLT 785 : (2007) 10 VST 72

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Jose Joseph, for the Appellant; Raju Joseph, Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Original Petition No. 15583 of 2002 was preferred seeking a declaration that the first proviso to Section 7(1)(a) of the Kerala General Sales Tax Act, 1963 is not applicable to the petitioner's case in the matter of fixation of compounding fee for the year 2000-01 and also to quash exhibit P-3 order determining the compounded tax payable for the year 2000-01 at Rs. 85,13,749.

2. Section 7(1)(a) of the Kerala General Sales Tax Act, 1963 provides for payment of tax at compounded rates for dealers in gold or silver ornaments or wares, at their option instead of paying tax in accordance with the provisions of the said section. For the assessment year 2000-01 as per Section 7(1)(a) as it stood at the relevant assessment year, compounded rate of tax payable by any dealer in gold was 120 per cent of the tax payable by him as conceded in the return or accounts for the immediate preceding year. It also provides that where any such dealer opens new branches, the compounded tax payable by him in respect of each new branch for the first year shall be twenty-five per cent of the compounded tax for the principal place of business.

3. The assessee had opened a new branch of business at Perintalmanna on September 1, 1999. The total tax admitted by the assessee for the year 1999-2000 respectively in the head office and branch office was Rs. 49,95,438 and Rs. 9,06,318, total of which would come to Rs. 59,01,756. The assessee had paid a sum of Rs. 59,06,459 and collected tax. The assessee is eligible to opt for payment of tax at compounded rate u/s 7(1)(a) of the Act and hence applied for permission to pay tax at the compounded rate for the year 2000-01. Based on the total tax paid by the assessee for the year 1999-2000, compounded tax payable by the assessee for the year 2000-01 in terms of Section 7(1)(a) is 120 per cent of Rs. 59,06,456, i.e., Rs. 70,87,151.

4. The assessee was permitted to pay tax at the compounded rate u/s 7(1)(a) by proceedings dated July 13, 2000. The assessee had remitted the monthly instalments and the total payment during 2000-01 towards compounding fee inclusive of amounts adjusted from advance payment of Rs. 72,33,857. The assessee was however served with an order dated April 10, 2002 from the second respondent stating that the compounded tax calculated and paid by the assessee is not correct and determined the compounded tax payable for the year 2000-2001 at Rs. 85,13,749. The assessee is aggrieved by the said order and has preferred the present writ petition. Reasons stated by the assessee for challenging the assessment order in O.P. No. 15583 of 2002 are equally applicable to the challenge against exhibits P3, P4 and P5 in O.P. No. 35822 of 2002 as well. Learned single Judge did not interfere with the compounded tax fixed. Against this the assessee has preferred W.A. No. 1279 of 2003. Common questions arise for consideration in these appeals and hence we are disposing of the same by a common judgment.

5. Learned Counsel for the appellant Sri Jose Joseph submitted that the assessing authority has committed an error in fixing the compounding fee due for the year 2000-01 by invoking the first proviso to Section 7(1)(a). The counsel submitted that the first proviso to Section 7(1)(a) is applicable only when during the preceding year the dealer has not transacted business for any period. The counsel also submitted that the branches are not independent entities and the first proviso to Section 7(1)(a) is not applicable in the case of the assessee. The counsel submitted that demand of tax at the compounded rate for grossing up of the turnover for the whole of the previous year for all the branches cannot be sustained. The counsel also urged for a liberal interpretation of Section 7(1)(a). The counsel submitted that the proviso has to be read so as to ascertain the intention of the Legislature which is clear from the language used in the first proviso. In support of this contention, counsel made reference to the decisions of the apex court in *Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad*, *Hansraj and Sons Vs. State of Jammu and Kashmir and Others*, and *Orissa State Warehousing Corporation Vs. Commissioner of Income Tax*, . The counsel submitted that the first proviso states the tax payable on the basis of the return filed or the accounts maintained for the previous year. Therefore, there is no question of

grossing up of the turnover. Learned Government Pleader for Taxes, Sri Raju Joseph, on the other hand contended that the Scheme of compounding contemplates payment of tax at compounded rate based on the full year's tax for the previous year and the tax payable by the assessee as conceded in the return or accounts for the immediate preceding year should include the tax payable for the whole year. The counsel submitted there is no ambiguity in the first proviso to Section 7(1)(a) of the Act warranting interference by this court.

6. Section 7(1)(a) of the Kerala General Sales Tax Act provides that any dealer in gold or silver ornaments or wares, may at his option, instead of paying tax in accordance with the provisions of that Sub-section, pay tax at two hundred per cent of the tax payable by him as conceded in the return or accounts for the immediately preceding year or the tax paid for the immediately preceding year, whichever is higher. The assessee had sought permission to pay tax at compounded rate and permission was granted by the authorities by order dated July 13, 2000. Later it was found that permission for payment of tax at the compounded rate was issued without calculating the tax payable by the branch for the year 2000-01 and the order dated July 13, 2000 had to be cancelled. The assessee had opened a branch office at Perintalmanna on September 1, 1999 and the branch had worked only for seven months during 1999-2000. The counsel submitted that the assessee had filed tax computation statement clubbing tax and surcharge paid for both the business places in one lumpsum figure and the omission was rectified.

7. We are of the view, going by the first proviso to Section 7(1)(a), tax payable for the immediately preceding year shall include tax for the whole of the year and not for a portion of the period. For example, during the year 1999-2000 one of the business places of the assessee at Perintalmanna had worked for only seven months, so the assessee ought to have calculated tax proportionately for the period during which the assessee had transacted business. Contrary approach would defeat the purpose of Section 7(1). We are not prepared to accept the contention of the assessee that proviso is not applicable to the business transacted in the branches. Proviso has not made any differentiation as to the places of business ; at the head office or at branches. In such circumstances, we are of the view that the assessing officer has rightly applied the proviso to Section 7(1)(a). Appeals lack merits and the same would stand dismissed.