

(2003) 06 KL CK 0078
In the High Court Of Kerala
Case No : T.R.C. No"s. 8 and 49 of 2003

Aluminium Fabricating Company

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 12-06-2003

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 7, 7(1), 7(11), 7(7), 7(7A)
Kerala General Sales Tax Rules, 1963 — Rule 30, 30(3), 30A

Citation : (2005) 139 STC 161

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : K.B. Muhamed Kutty and K.M. Firoz, for the Appellant; Raju Joseph, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. The question which arises for consideration in this case is as to whether an assessee who is a works contractor is liable to produce the contracts entered into by him with the awarders as a condition for the grant of permission to make payment of tax at the compounded rate provided under Sub-section (7)/(7A) of Section 7 of the Kerala General Sales Tax Act, 1963 (for short "the Act").

2. The same assessee is the revision petitioner in both the cases. State of Kerala is the respondent. The assessment years concerned are 1991-92 and 1992-93 respectively. For the said two years the assessee had applied for payment of tax at the compounded rate as provided under Sub-section (7A) of Section 7 of the Act (for short "the Act"). It appears that the assessee had made an application in form 21B prescribed under rule 30A of the Kerala General Sales Tax Rules, 1963. The assessing authority had rejected the said application on the ground that the assessee had not complied with the requirements of Sub-section (11) of Section 7 of the Act which provides for filing the returns showing all the contracts he had undertaken along with certificates from the awarders. It is specifically stated that the said application was not accepted since the assessee had not produced the

contracts entered into with the awarders. On that basis the assessing authority had completed the assessment for the aforesaid two years. The assessee took up the matter in appeal. The first appellate authority upheld the order of the assessing authority in regard to the rejection of the application for compounding but modified the assessment by granting relief in respect of certain other matters. Both the assessee and the State filed appeals against the said orders. The Tribunal relying on the provisions of Section 7(11) of the Act held that since the assessee had not complied with the requirements of the said Sub-section the assessee is not entitled to avail the compounding facility. The Tribunal accordingly sustained the orders of the two authorities. It is unnecessary for us, to deal with other matters considered by the Tribunal since the petitioner is aggrieved only against the order of the Tribunal upholding the orders of the authorities below on the question of rejection of the compounding application. Probably it is for the reason that if the application for compounding is allowed certainly the nature of the assessment to be completed may be slightly different.

3. Dr. K.B. Muhamed Kutty, learned counsel appearing for the petitioner submits that the assessing authority and the two appellate authorities had erroneously rejected the application for compounding. The counsel submits that there is no provision either in the Act or in the Rules mandating the production of contracts entered into between the assessee and the awarders at the time of filing the application for compounding and that the assessing authority cannot insist for production of the contracts at the stage of compounding. The counsel also submitted that the provisions of Section 7(11) comes into operation only after the close of the assessment year with respect to which the compounding facility is granted, as is evident from the said provision itself. The counsel also took us to the relevant provisions of Section 7 and also rules 30, 30A and the various forms, form 21 and form 21A in support of his contention.

4. The learned Special Government Pleader appearing for the respondent, on the other hand, submitted that by virtue of the provisions of Sub-section (9) of Section 7 the assessing authority is entitled to request the assessee to produce the contracts entered into between the assessee and the awarders in order to enable him to arrive at a satisfaction that the compounding facility can be granted. The Special Government Pleader took us to the provisions of Sub-section (9) of Section 7 in that regard. He also took us to the provisions of rule 30 and rule 30A as it stood during the relevant assessment years. He further submitted that form 21B has no application and the only form that can be applied is in form 21. Further, the Special Government Pleader submits that there is no specific provision either in the Act or in the Rules or in the form for production of the contracts at the stage of consideration of the compounding application except Sub-section (9) of Section 7 which requires the assessing authority to conduct enquiry and to arrive at the satisfaction. He on that basis submitted that if the assessing authority requires the assessee to produce the contract the assessee is bound to furnish the satisfactory reply which has not been done.

5. We have considered the rival submissions and have also perused the relevant provisions of the Act and the Rules as also the orders of the Tribunal and the lower authorities. Admittedly the petitioner is a works contractor engaged in aluminium fabrication. The petitioner had applied for payment of the tax at the compounded rate as provided u/s 7. The assessing officer had rejected the same solely on the ground that the assessee did not produce the contracts. So the question for consideration is as to whether the assessee is bound to produce the contracts or any other documents along with the application for compounding or during the pendency of such application if required by the assessing authority. For adjudication of the said question it is necessary to refer to the relevant provisions in the Act and the Rules. Section 7 deals with the payment of tax at the compounded rates. Sub-section (7) thereof states that notwithstanding anything contained in Sub-section (1) of Section 5 every contractor, in civil works of construction of building, bridges, roads, etc., may at his option instead of paying tax in accordance with clause (iv) of that Sub-section pay tax at the rate of two per cent on the whole amount of contract which shall be deducted from the payments made by the awarder. Sub-section (7A) introduced by Act 8 of 1992 with retrospective effect from April 1, 1984 provided that notwithstanding anything contained in Sub-section (1) of Section 5 every contractor not covered by Sub-section (7) may at his option, instead of paying tax in accordance with the said section, pay tax on the whole amount of contract at the rate of 70 per cent of the rates shown in the Fourth Schedule against such contract, less any tax paid by him under this Act on the purchase of any goods used in such contract, the transfer of which to the works contract was effected without any processing or manufacture. The proviso thereto provided that in respect of a contract entered into on or after the 1st day of April, 1984 and the amount of which does not exceed fifty lakh rupees, the contractor may, if he has not opted for payment of tax in accordance with the provisions of this Sub-section, opt to pay tax at five per cent of such contract amount. Sub-section (8) as it stood during the relevant assessment years provided that the option referred to in Sub-section (1) shall be exercised by an application to the assessing authority and the option referred to in Sub-sections (7) and (7A) may be exercised either by an express provision in the agreement for the contract or by an application to the assessing authority, to permit him to pay the tax in accordance with any of the said Sub-sections. Sub-section (9) provides that on receipt of an application under Sub-section (8), the assessing authority may grant the permission or, for good and sufficient reasons to be recorded in writing, reject the same. Sub-section (11) provides that any contractor opts for the payment of tax in accordance with the provisions of subsections (7) and (7A) shall file the returns showing all the contracts he has undertaken along with certificates from the awarders, showing the whole amount of contract and the details of tax deducted and remitted to Government and if the particulars are correct and complete, the assessing authority may summarily make an assessment on that basis. Sub-section (12) further provides that after the close of the year or at the completion of the works contract and on receipt of final statement of accounts and return, if

the tax on purchases is found to be in excess of the tax payable under the compounded rates, no refund of such excess tax paid shall be made. Rule 30 of the Kerala General Sales Tax Rules, 1963 provides the machinery for implementation of the said provisions. Sub-rule (3) of rule 30, clause (i) thereof provides that the application for the grant or renewal of such permission shall be made in form 21 within thirty days of commencement of the Act in the case of a dealer who had been carrying on business, before the commencement of the Act or within thirty days from the date of commencing business in the case of a dealer who commences business after the commencement of the Act and thereafter for every year on or before the first day of May immediately following that year. Under Sub-clause (ii) such permission may be granted for a period from the beginning of the year or from the date of commencement of business till 31st March next following or till such date as the total turnover of the dealer during the year exceeds one lakh and ten thousand rupees specified in Section 7, whichever is earlier. Sub-rule (4A) inserted by S.R.O. No. 377 of 1992 dated March 31, 1992 provides that if any dealer in works contract or arrack is claiming deduction for the reason that he has paid tax on his purchase within the State, such claim shall be accompanied by a statement in the form specified therein. Rule 30A provides the procedure in respect of the matter covered by Sub-section (7) of Section 7. Since we are not concerned with the said situation it is not mentioned. Form 21 prescribed under rule 30(3)(i) mentioned about the application for permission u/s 7. However, in the body it is seen that the reference is "for permission in form 21A to pay tax at the rates specified in Section 7 read with rule 30". However, the said rule also provides for submission of a return in form No. 9 showing the annual total turnover and taxable turnover for the preceding year and another return in form No. 10 showing the estimated total turnover and taxable turnover for the current year.

6. It would be seen from rule 30 that it deals with the entire situation covered by Section 7. It can also be seen from rule 21 that there is no requirement of production of any documents other than the return showing the details of the previous year and also the estimate of the current year. As already noted, the authorities and the Tribunal were under the impression that the provisions of subsection (11) of Section 7 has to be complied with in order to grant permission for payment of tax at the compounded rate provided under Sub-section (7A) of Section 7. Having regard to the scheme of the Act which is discernible from the provisions of Sub-sections (7), (7A), (8) and (11) we are of the view that Sub-section (11) will apply only to a situation after permission is granted as provided under subsection (9) of Section 7. True, Sub-section (9) of Section 7 provides grant of permission after gathering the necessary details.

7. Having regard to the fact that the assessee is obliged to file application under Sub-section (7)/(7A) within thirty days from the commencement of the business in case it is a new business or within thirty days of the commencement of the assessment year, certainly it may be a situation where the assessee may or may not have any business transaction during the said period. In such circumstances

there is no question of application of the provisions of Sub-section (11) of Section 7. Taking into account all the circumstances we are of the view that there is no requirement of production of the agreement and other details at the time of grant of permission.

8. As we have already noted the only case of the assessing authority is that the assessee has not produced the contract. The Tribunal was under the impression that Sub-section (11) of Section 7. will apply. In the light of what we have stated there is no substance in the assumption of the assessing authority that the contract and other documents, if any, has to be produced to enable the assessing authority to grant permission for compounding. The Tribunal has also erred in thinking that the production of the contract and other documents is required as a condition for grant of permission as contemplated under Sub-section (7A) of Section 7. In these circumstances, we are of the view that the order of the Tribunal on the question of grant of permission under subsection (7A) of Section 7 cannot be sustained. We hold that the assessee is entitled to the grant of permission as sought for by it.

9. Since we have held that the assessee is entitled to the compounding facility provided u/s 7(7)/7(7A) certainly it is a matter for the assessing authority concerned to pass orders in accordance with the provisions of Sub-section (11) of Section 7. The assessing authority will complete the assessment as contemplated u/s 7 of the Act.

The tax revision cases are allowed to the above extent.