

(2005) 06 KL CK 0091

In the High Court Of Kerala

Case No : W.A. No's. 944 and 1374 of 1998 and 1721 of 1999 and TRC No. 393 of 1998

Answara Traders

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 30-06-2005

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 23(3), 5, 5(1), 5(2), 7(14)
Kerala General Sales Tax Rules, 1963 — Rule 21, 30

Citation : (2008) 11 VST 875

Hon'ble Judges : Rajeev Gupta, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : V.P. Sukumar, for the Appellant; Raju Joseph, Government Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Common question arises for consideration in all these cases, hence we are disposing of these cases by a common judgment. For disposal of these cases we may refer the facts in O.P. No. 5328 of 1997 against which W. A. 944 of 1998 was Hied.

Petitioner in O.P. No. 5328 of 1997 was served with exhibit PI notice dated December 5,1996 stating that petitioner is liable to pay tax at 20 per cent of the kist amount less tax paid on the purchase of arrack at purchase point at the appropriate rate, i.e., 50 per cent and proposed to demand further amount from the petitioner. Petitioner filed exhibit P2 objection stating that under Sub-section (14) of Section 7 of the act, petitioner is entitled to deduct the tax paid at the purchase point and that there is no stipulation that the amount to be deducted cannot exceed 50 per cent as stated in the notice. Petitioner had also stated that since he was not registered dealer under the Act for certain period during the assessment year in question he was obliged to pay tax as provided under column (8) of item 1 of the Fifth Schedule particularly in view of the proviso to Section 5(1)(v) and he had paid 62.5 per cent as provided under column (8) mentioned above. Notwithstanding the said objections the first respondent passed exhibit P3

order dated December 31, 1996 rejecting the contention taken by the petitioners and maintaining that arrack is taxable at two points and that the deduction contemplated under Sub-section (14) of Section 7 is only the tax payable at the first sale point and that the tax payable at the first sale point is only 50 per cent. Pursuant to exhibit P3 order the first respondent issued exhibits P4, P4(a) and P5 demand notices. Further, first respondent also issued exhibit P6 demand notice u/s 23(3) demanding penal interest. Petitioner along with others challenged those proceedings before this court.

2. A learned single Judge of this Court interpreting Sub-section (14) of Section 7 took the view that the Legislature while providing for deduction of the tax paid by a dealer for the purchase of arrack on the first sale point could have meant only the tax which is payable under the Act and paid by the dealer. Learned single Judge also felt that any other meaning to be attributed to the expression "tax paid by him" for the purchase of arrack on the first sale point will not be in accordance with the scheme of the Act. Learned single Judge felt that the tax paid in the context has to be understood only as the "tax payable". Learned single Judge therefore concluded that the petitioner is entitled to deduct the tax paid only at the rate of 50 per cent while computing the amount payable under Sub-section (14) of Section 7 of the Act. Consequently the proceedings initiated by respondents were upheld.

3. Learned single Judge also noticed that in a case where the petitioner has paid tax in excess of what is due under the Act and the same has been made over to the Government by the dealer who collected the same in accordance with the provisions of Rule 21 of the Kerala General Sales Tax Rules, 1963 and if the said dealer had not made any claim for refund of the excess amount so remitted cannot be said that the petitioner did not pay tax as provided under Sub-section (14) of Section 7 of the Act. Learned single Judge also took the view that if the petitioner is able to establish that the excess amount collected by the dealers on the sale of arrack to the petitioner had been remitted to the department in time and that no claim for refund of the said amount had been made by the said dealer either by way of appeal or otherwise and that the said amount remitted is with the Government, certainly the petitioner would be entitled to get back the said amount or adjust the said amount towards the balance tax demanded.

4. Petitioner aggrieved by the interpretation given by the learned single judge to Sub-section (14) of Section 7 has approached this court. Counsel appearing for the petitioner Sri V.P. Sukumar as well as Sri. Jayasankar submitted that the interpretation given by the learned single Judge to Sub-section (14) of Section 7 cannot be sustained. Counsel submitted, during the relevant period arrack is an item included as item No. 1 in the Fifth Schedule to the Act taxable at two points. Counsel referring to Section 5(1)(v), Schedule V, item No. 1 and also the provisions of Section 7(14) of the Act submitted that in the case of an unregistered dealer, the tax payable at the first point of sale is as provided in column (8) of item No. 1 of the Fifth Schedule which is 62.5 per cent and that by

virtue of the provisions of the proviso to Section 5(1)(v) the petitioner was obliged to pay tax at the said rate and that the tax at the rate of 62.5 per cent was also paid as demanded by the sellers. Counsel submitted Section 7(14) of the Act clearly provides for deduction of the tax so paid while computing the tax payable at the compounded rate. Counsel submitted there is no justification for reading into Section 7(14) tax paid is tax payable. Counsel further submitted petitioner has paid the tax demanded as per various notices and therefore entitled to refund of the amount.

5. Learned Senior Government Pleader for Taxes Sri Raju Joseph on the other hand, contended that petitioner is entitled to deduct only the tax payable at the first point and submitted that the petitioner is entitled to get refund only if he had complied with Rule 30 of the Kerala General Sales Tax Rules, 1963, on submission of application in prescribed form. Counsel submitted only if those formalities have been complied with petitioner would be entitled to get benefit.

6. We may refer to the relevant provisions before we examine the scope of Section 7(14) of the Act which is extracted below:

5. Levy of tax on sale or purchase of goods.--(1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than one lakh rupees and every casual trader or agent of a non-resident dealer whatever be his total turnover for the year, shall pay tax on his taxable turnover for that year,-

Clause (v) thereof reads as follows:

In the case of goods specified in the Fifth Schedule at the rates and at the two points specified against such goods in the said Schedule:

Provided that where there are no two points of sale in the State for any goods coming under the Fifth Schedule and the first sale is to a person other than a registered dealer, the rate specified in column (8) of that Schedule shall apply to such sales.

Item No. 1 of the Fifth Schedule reads as follows:

Fifth Schedule

Goods in respect of which tax is leviable on two points under Sub-section (1) or Sub-section (2) of Section 5.

Sl. No.	Descr- ipti- (per Goods)	First point of levy tax cent)	Rate of levy tax cent)	Second point of sale cent)	Rate of levy tax cent)	Where there are no two points of sale	Rate of levy tax cent)
		(1)	(2)	(3)	(4)	(5)	(6)
		(7)	(8)				
1.	Arrack	At the point of first sale in the State by a dealer who is lia-	50	At the point of first sale in the State by a dealer who is lia-	12.5	At the point of first sale in the State by a dealer who is lia-	62.5

a dealer liable to tax under Section 5 to a person other than a registered dealer. ---

Section 7(14) reads as follows:

(14) Notwithstanding anything contained in Sub-section (1) of Section 5, any dealer who is having licence for retail sales in arrack, may at his option instead of paying tax in accordance with Clause (v) of that sub-section, pay tax at twenty per cent of twice the rental amount payable by him under the Abkari Act 1 of 1077 for the licence, less tax paid by him for the purchase of arrack on the first sale point.

Section 7(17) reads as follows:

After the close of the year and on receipt of statement of accounts if the tax paid on purchases is found to be in excess of twenty per cent of the rental amount payable for the year no refund of tax paid shall be made.

7. Learned single Judge interpreting Sub-section (14) of Section 7 took the view that the Legislature while providing for deduction of the tax paid by a dealer for the purchase of arrack on the first sale point could have meant only the tax which is payable under the Act. Learned single Judge concluded that any other meaning to be attributed to the expression "tax paid by him" for the purchase of arrack on the first sale point will not be in accordance with the scheme of the Act. Learned single Judge further concluded that the tax paid in the context has to be understood only as the "tax payable". Learned single Judge therefore concluded that the tax payable for the purchase of arrack on the first sale point in the case of the petitioners as provided under item No. 1 of the Fifth Schedule is only 50 per cent and if that be so, the petitioners are entitled to deduct the tax paid only at the rate of 50 per cent while computing the amount payable under Sub-section (14) of Section 7 of the Act.

8. We find it difficult to accept the interpretation given by the learned single Judge. The apex court in *Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner* [1978] 41 STC 409 held that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases. A Full Bench of this Court in *Kurian Abraham (P) Ltd. Vs. Asst. Commissioner (ASSMT) II*, held that the provisions of a taxing statute have to be construed strictly. A person cannot be taxed unless the provision clearly provides for it. The words of the statute or the relevant entry have to be given their true and natural meaning. The authority cannot add to the words. It cannot impose a levy by reading an implication into the plain words of the provision. There is no room for intendment. The words of the statute cannot

be strained. The strict letter of law has to be seen. While interpreting Sub-section (14) of Section 7 we cannot strain the language or read the words "tax paid" as "tax payable". What is intended by the Legislature is all that the Government shall receive 20 per cent of the rental amount in total as tax on sale of arrack. That is the reason why the tax paid on the purchase of arrack at the first sale point is ordered to be deducted so that the total tax received would become 20 per cent of the rental amount. When we interpret the above quoted provision it is evident that the rate of tax applicable to an unregistered dealer is 62.5 per cent. Assessee's case is that he had paid tax at that rate. If that be so, in our view, the claim raised by the assessee is justifiable.

9. We have however, to test whether they had in fact paid the amount and before paying the said amount they had followed all the formalities including Rule 30. Burden is on the assessee to show that he had followed the formalities, in the event of which, we are of the view, they are entitled to get refund. Assessee may produce all relevant documents before the authorities concerned within a period of one month from today, in the event of which, those documents would be considered and disposed of in accordance with this judgment.

10. Writ appeals and TRC are disposed of accordingly.