
(2001) 03 KL CK 0072
In the High Court Of Kerala
Case No : T.R.C. No. 341 of 2000

Baiju and Company

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 7, 7(14)

Citation : (2001) 123 STC 557

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : V.V. Asokan, Government Pleader, for the Respondent

Judgement

S. Sankarasubban, J.—This T.R.C. has been filed challenging the order of the kerala Sales Tax Appellate Tribunal, Additional Bench, Kozhikode. Two appeals were preferred before the Tribunal. The assessee filed T.A. No. 411 of 1998, while the State filed T.A. No. 497 of 1998. Both the appeals were dismissed. The orders passed by the appellate authority was confirmed.

2. The assessment year in question is 1993-94. The assessee is a dealer in arrack during 1993-94. The assessee had conducted business only in the said year. The assessee had bid in auction the right to conduct business in arrack in shop Nos. 118 to 132 of Group No. 1 of the Kunnamangalam Range for an amount of Rs. 22,00,500. The privilege price which was so fixed in respect of the shops in question for the year 1993-94 turned out in sharp enhancement of the rental obtained for the previous year, viz., Rs. 6,61,500. According to the assessee, the assessee was not given registration under the Kerala General Sales Tax Act and the Central Sales Tax Act. The application in form No. 21 was also submitted seeking to come within the compounding system under which dealers were permitted to pay tax at a fixed rate of 20 per cent of base rental amount, Because, the registration was not given, the assessee was not in a position to import the rectified spirit from outside the State.

3. It appears that the assessing authority inspected the premises on November 6, 1993. Inspection was also conducted on June 12, 1993 and March 23, 1994. On June 12, 1993, the Intelligence Squad, Kozhikode, inspected the premises and found 1,340 litres of arrack and there was an excess stock and penalty was imposed u/s 45A of the Act. On March 23, 1994, the assessing authority inspected the business premises. Stock of 70 litres of arrack was found. Books of accounts were not available at the time of inspection. The assessing authority was not satisfied with the return given by the petitioner and rejected the accounts. Then the assessing authority assessed on the best judgment assessment by estimating the turnover at 5 times rental amount.

4. Against the abovesaid assessment, the petitioner preferred appeal before the appellate authority. The appellate authority agreed with the assessing authority regarding the rejection of accounts. But regarding the estimation of the turnover, it disagreed with the assessing authority. It held as follows : "The materials available in the records are the stock variation noticed at the time of inspection of the business premises on June 12, 1993 and the non-availability of the books of accounts at. place of business of the appellant noticed at the time of inspection conducted on March 22, 1994. Based on these materials the assessing authority boosted up the turnover of the appellant from Rs. 3,58,632 to Rs. 1,10,02,500. Considering the quantum of suppression detected as a result of the abovesaid inspections, the estimation of sales turnover as 5 times of the rental amount made by the reasonable nexus to the materials on record". It is against the above order that both the State and the assessee preferred appeals before the Tribunal. The Tribunal dismissed both the appeals. So far as the appeal filed by the assessee is concerned, the Tribunal held that the estimate of turnover retained by the Appellate Assistant Commissioner is neither excessive nor arbitrary. Therefore, the Tribunal confirmed the order passed by the Appellate Assistant Commissioner.

5. Learned counsel for the petitioner submitted that even conceding that the rejection of accounts was proper, the estimation at 1 1/2 times of the rental is arbitrary. According to him, the rental cannot be based for estimating the turnover, because the rental is not fixed on the basis of any quantity of arrack to be supplied. The rental is fixed as a result of the bid. Many times the shops are bid to see that fresh shop owners do not bid shops. Further, the assessee may bid one shop at higher amount and another shop at a lower amount and it is in these circumstances that the contractor will be able to make the profit. Learned Government Pleader submitted that there is nothing wrong in making best judgment assessment on the basis of the rental. Learned Government Pleader drew our attention to Section 7(14) of the Kerala General Sales Tax Act, 1963.

6. According to us, the order of the Tribunal estimating the turnover at 1 1/2 times of the rental is not correct and against the provision of law. We are stating this, because u/s 7, the assessee can compound the assessment in certain circumstances. So far as the sale of arrack is concerned, Section 7(14) of the Act

deals with the same. Section 7(14) as it stood at the relevant time, is as follows :

"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 thirty per cent of 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."

According to us, if the department wishes to fix the turnover on the basis of the rental, it can be done only on the basis of Section 7(14) of the Act. It cannot just fix the turnover on the basis of multiplying the rental. According to us, the rental cannot give a clear indication of the turnover in the light of the fact that the rental is not fixed on the basis that particular quantity of arrack will be supplied, as required by the assessee. Hence, if the department is going to resort to the estimation on the basis of rental, it should be based on the conditions laid down u/s 7(14) of the Act. This has not been followed in this case. In the revision petition, the assessee had stated that it had opted on the basis of Section 7(14) of the Act. Since this has not been considered by the Appellate Tribunal, we set aside the order of the Appellate Tribunal and remand the matter to the Tribunal to consider the question on the basis of the directions.

T.R.C. is disposed of as above.

Order on C.M.P. No. 4901 of 2000 in T.R.C. No. 341 of 2000 is dismissed.