(2006) 06 KL CK 0005

In the High Court Of Kerala

Case No : O.P. No. 27537 of 2002, W.P. (C) No''s. 31484 of 2003, 5039 of 2004 and 4797 of 2006 (U)

Bhima Jewels — APPELLANT

Vs

Assistant Commissioner (Assessment), Commercial Taxes and Another — RESPONDENT

Date of Decision : 05-06-2006

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 19, 23(3), 5(1), 5A, 5D

Citation : (2008) 12 VST 280

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : K.B. Muhamed Kutty and K.M. Firoz, for the Appellant; Sojan James, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—In these connected cases filed by sister concerns one in Alappuzha and the other in Ernakulam, the issue is common and therefore the cases are heard together and disposed of by this common judgment. The matter pertains to the sales tax assessments of both the assessees for 2000-01 and 2001-02. The petitioners being dealers in gold and silver jewellery claimed benefit of payment of tax at compounded rate u/s 7(1)(a) of the Kerala General Sales Tax Act, 1963. Under this section, a dealer in jewellery could settle his sales tax liability for the year 2000-01 by remittance of 120 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 said year, whichever is higher, which in this case is 1999-2000. Later the percentage of tax payable at compounded rate was increased from 120 per cent to 150 per cent and thereafter from 150 per cent to 200 per cent of the previous year''s tax. Both the petitioners filed applications for payment of tax at compound rate u/s 7(1)(a) for the assessment year 2000-01 which were accepted by the officer and assessments were accordingly completed. However, later the assessing officer noticed that apart from sale of gold and silver jewellery, the petitioners were buying and selling standard gold (bullion) which is not covered under the scheme of compounding u/s 7(1)(a) as the item falls under separate entry in the First Schedule. According to the officer the turnover on sale of bullion is separately taxable in addition to the tax payable at compound rate. Therefore, he issued proceedings u/s 19 of the KGST Act and modified the original assessments completed for both the petitioners for the year 2000-01 by demanding tax on the first sales turnover of bullion in addition to the tax payable at compound rate for the jewellery business. So far as the assessment year 2001-02 is concerned, even though both the petitioners filed application for compounding and the petitioners were permitted to remit tax at compound rate, the officer while making regular assessment made separate assessment of first sales turnover of standard gold (bullion) in addition to the tax payable at compounded rate. It is against these orders the petitioners have approached in this Court. I heard senior counsel Dr. K. B. Muhamed Kutty who appeared for the petitioners and Government Pleader for the respondents.

2. Since the question pertains to the scope and ambit of Section 7(1)(a) of the KGST Act the said provision is extracted hereunder for easy performance.

7(1)(a). Payment of tax at compound rates.--Notwithstanding anything contained in Sub-section (1) of Section 5, any dealer in gold or silver ornaments or wares may, aft his option, instead of paying tax in accordance with the provisions of that sub-section, pay tax at 200 per cent of the tax payable by him as conceded in the return or accounts for the immediate preceding year.

There is no dispute that the petitioners are dealers in jewellery made of gold and silver and therefore the petitioners are entitled to payment of tax at compound rate under the above provision. But the question is whether by availing the facility of payment of tax at compound rate a dealer in gold or silver ornaments or wares can cover tax liability on other items dealt with by him. In other words the issue is whether settlement of tax liability at compound rate by jeweller is only for gold or silver ornaments or wares or whether it is for other goods sold by the dealer also. I find the petitioners themselves have no case that by payment of tax at compound rate for gold or silver ornaments or wares, the petitioner''s liability for payment of tax on the turnover of other goods stand settled because it is seen from the impugned assessment produced as exhibit P8 in O. P. No. 27537 of 2002 that the petitioner in that case in addition to payment of tax at compound rate has also paid tax on two other items of goods, namely, precious stones at 8 per cent and on the sale of car at 12 per cent. In other words, there is no dispute that tax is payable by dealer at the appropriate rate on the taxable turnover of other goods in addition to the tax payable at compound rate on the turnover of gold and silver ornaments and wares. Therefore, the short question is whether tax payable on the taxable turnover of standard gold (bullion) is also covered by the payment of tax at compound rate. Counsel for the petitioner contended that the petitioners had business in bullion in the previous year also and while determining tax at compound rate for that year, the tax paid on the first sales of standard gold (bullion) in the year preceding that year was reckoned and so much so the department has accepted the business in bullion as a part of business in "gold or silver ornaments or wares" as referred in Section 7(1)(a) of the KGST Act. Therefore according to the counsel no separate tax can be demanded on first sales turnover of bullion in addition to the compounded tax paid for the whole year which according to him covers bullion sales also. The Government Pleader, on the other hand, contended that the payment of tax at compound rate is only in respect of tax payable on gold or silver ornaments or wares and not of standard gold (bullion) which is not gold jewellery or wares. The crucial issue is whether the standard gold (bullion) will come within the expression "gold or silver ornaments or wares". Standard gold (bullion) are not defined under the statute but in common parlance standard gold (bullion) is pure gold (24 ct.) and it is the raw material used for making gold ornaments. Standard gold (bullion) certainly by itself does not constitute gold ornament. In fact, the petitioners themselves are purchasing standard gold (bullion) to make gold ornaments out of it, though the petitioners are also engaged in purchase and resale of the bullion in large volumes. Counsel for the petitioners contended that gold in all forms are covered by Section 7(1)(a) or at least standard gold (bullion) comes within the description of "gold wares". I am unable to accept this contention because the expression "dealer in gold or silver ornaments or wares" u/s 7(1)(a) means "dealer in gold ornaments or silver ornaments or in gold wares or in silver wares" and therefore a dealer in standard gold (bullion) is not covered thereunder. In order to understand the scope of section it has to be read with reference to the entries in the Schedule because if compounding is not opted every dealer is liable to pay tax applicable to the goods under the Schedule to the Act at the rate and at the point of sale referred to therein. It is pertinent to note that jewellery of gold and silver and platinum group metals and articles made out of these metals are covered by entry 75(1) of the First Schedule to the Act taxable at the first point of sale at four per cent. However, bullion and precious stones are covered by item 20 of the First Schedule taxable at the point of first sale at one per cent up to March 31, 2002. By virtue of separate entries provided for standard gold (bullion) and jewellery and wares, it is clear that standard gold (bullion) is not covered by entry 75. The scheme of payment of tax at compound rate provided u/s 7(1)(a) for gold and silver ornaments and wares therefore is in lieu of tax payable for the items under item 75 of the First Schedule to the Act. Even though counsel contended that standard gold (bullion) comes within the description of gold ornaments, it is not acceptable because gold ornaments are articles made of gold and not gold in its pure form which is separately covered by another entry in the Schedule referred above. It is common knowledge that gold ornaments are of 22 carat purity while bullion is 24 carat. In fact, bullion is generally marketed under RBI control through authorised banks and is raw material for gold ornaments.

3. Even though counsel for the petitioner contended that purchase and sale of standard gold (bullion) is only an incidental transaction to the business in jewellery, facts disclose otherwise. Exhibit P8 assessment, produced in O. P. No.

27537 of 2002 shows that the petitioner in that original petition which had a sales turnover of gold ornaments and precious stones to the tune of Rs. 20.71 crores sold standard gold (bullion) worth Rs. 67 crores, out of which taxable sales of standard gold (bullion) was Rs. 41.38 crores. In other words, the purchase and sale of standard gold (bullion) is 3 times that of turnover in jewellery. The position of the very same petitioner in the next year also is the same because it is clear from exhibit P1 produced in W. P. (C) No. 31484 of 2003 that during the next year 2001-02 also the petitioner in that original petition had turnover of Rs. 55.73 crores in standard gold (bullion) out of which the first sale that is taxable sales of standard gold (bullion) amounts to Rs. 43.38 crores. It is pertinent to note that sales turnover of jewellery of the petitioner in that year was only Rs. 20.75 crores. From the comparative figures of sales by the petitioners in other connected cases also, it is seen that the petitioners were engaged in massive purchase and sale of standard gold (bullion). Though strange and difficult to believe, both petitioners are more traders in bullion than dealers in jewellery.

4. From the foregoing discussion, I hold that the system of payment of sales tax at compound rate u/s 7(1)(a) for jewellery does not cover purchase and sale of standard gold (bullion). Therefore a dealer who opted to pay tax at compound rate for gold and silver ornaments and wares is liable to pay tax in addition to the tax at compound rate at the appropriate rate provided under the Schedule to the Act for the first sales turnover of standard gold (bullion). Therefore the impugned reassessments for 2000-01 and the regular assessment for 2001-02 on the first sales turn-over of standard gold (bullion) are confirmed.

5. The counsel for the petitioners contended that if standard gold (bullion) is not covered by business in gold, jewellery and wares referred to Section 7(1) (a), the tax paid on first sales of standard gold (bullion) in the year 1999-2000 should not have been reckoned for demand of tax at compound rate for the year 2000-01. I am in complete agreement with this argument because if the business in standard gold (bullion) is not covered by Section 7(1)(a), then demand of tax at compound rate for 2000-01 at 120 per cent of the tax paid for 1999-2000 should be after excluding the tax paid on standard gold (bullion) by the petitioners for 2000-01. However this applies only in respect of tax paid on the first sales of standard gold (bullion) for the year 1999-2000. In other words, purchase tax if paid u/s 5A on standard gold (bullion) purchased for remake of jewellery for the year 1999-2000 has to be reckoned for payment of tax at compounded rate at 120 per cent for the next year. In fact, it is seen from the appellate order produced in this Court, in the case of the petitioner in W. P. (C) No. 31484 of 2003 for the year 2001-02, that the appellate authority directed the assessing officer to examine the claim and exclusion of sales tax paid on standard gold (bullion) from the tax payable at compound rate. In the revised order produced by the petitioner in that writ petition in this Court, it is seen that the assessing officer has excluded the tax paid on standard gold (bullion) for the preceding year from the tax payable at compound rate leading to a refund to the

petitioner. There is no need for this Court to verify the genuineness of the transactions or the correctness of the revised order passed by the assessing officer. However, I make it clear that while reckoning the tax payable in the previous year based on which tax at compound rate is demanded for the subsequent year, the assessing officer has to exclude the tax paid by the petitioner on the first sale of standard gold (bullion). However purchase tax, if any, paid u/s 5A on the purchase turnover of standard gold (bullion) used in the manufacture of gold ornaments has to be included as tax paid in the preceding year for the purpose of demand of tax at compound rate for the next year. The next issue raised in the original petition is demand of additional tax u/s 5D on tax payable at compounded rate which is covered by decision of this Court in Bhima Jewellery Vs. Assistant Commissioner, Therefore this issue raised by the petitioner is rejected confirming the demand of additional tax on tax demanded at compound rate.

6. So far as demand of interest on tax is concerned it is settled position that interest cannot be demanded u/s 23(3) except for default. There cannot be any default in payment of tax at compound rate because such payments are made based on orders issued by the officer in the prescribed format in form 22 on compounding application filed by the petitioner. Therefore no interest is payable u/s 23(3) unless default is committed after fresh demand is raised based on revised assessment or regular assessment. The assessing officer is therefore directed to issue revised orders modifying the demand to the extent required. Accordingly the writ petitions are disposed of sustaining the separate demand of tax on standard gold (bullion) in addition to the tax payable at compound rate but with direction to the assessing officer to modify tax liability at compound rate by excluding tax paid u/s 5(1) on first sales of standard gold (bullion) in the previous year.

7. Writ petitions are disposed of accordingly.