
(2014) 03 KL CK 0026

In the High Court Of Kerala

Case No : O.T. Rev. Nos. 57, 130, 134, 135 and 136 of 2013 and 22, 23 and 24 of 2014

Geogy George

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5(1)(iv), 7, 7(7)

Kerala Value Added Tax Act, 2003 — Section 10, 2(iv), 6, 6(1), 6(1)(e)

Citation : (2014) 71 VST 510

Hon'ble Judges : Dr. Manjula Chellur, C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : N. Muraleedharan Nair, V.K. Shamusudheen, Harisankar V. Menon, Meera V. Menon and Mahesh V. Menon, Advocate for the Appellant; Bobby John, Government Pleader, Advocate for the Respondent

Judgement

Dr. Dr. Manjula Chellur, C.J.—O. T. Rev. Nos. 57 of 2013, 134 of 2013, 135 of 2013 and 136 of 2013 are filed by the assessee challenging the order of the Kerala Value Added Tax Additional Appellate Tribunal (for short, "the Tribunal"), Palakkad dated March 20, 2013 and June 26, 2013, respectively. O. T. Rev. Nos. 130 of 2013, 22 of 2014, 23 of 2014 and 24 of 2014 are filed by the State aggrieved by the common order dated April 30, 2013 of the Kerala Value Added Tax Additional Appellate Tribunal, Ernakulam. In all the above revisions, the common controversy which needs clarification at the hands of this court is what exactly would include under section 8(a)(i) of the Kerala Value Added Tax Act (for short, "the Act") so far as the expression "whole contract: amount". In so far as revision petitions filed by the State, turnover pertaining to assessment years 2006-07, 2007-08, 2008-09 and 2009-10 are involved. The respondent/assessee admittedly is a works contractor at Thrissur. He had opted for payment of tax at compounded rate as per section 8(a)(1) of the Act. After verification of annual return with audited statements in form Nos. 13 and 13A with reference to the above orders, assessee had claimed exemption towards receipt from labour

contract for the abovesaid period. According to the assessing authority, assessee having opted for payment of tax under section 8(a) (i) was liable to pay tax on the whole contract amount, including receipts from labour contract. According to the assessing officer, a dealer adopting compounded method of assessment cannot claim exemption in respect of receipts from labour contract, therefore, he has to pay tax on the whole contract amount. Aggrieved by disallowance of exemption claimed on receipt from labour contract, appeals came to be filed before the Deputy Commissioner (Appeals), Thrissur, who confirmed the order of the assessing authority. Aggrieved by the same, the appeals came to be filed before the Tribunal and the Tribunal's common order is under challenge before us.

2. The stand of the assessee is that he undertook two types of contracts. First type was construction activity by employing labour as well as by procuring and supplying necessary materials for construction work. Second type of contract exclusively relates to labour contract and there is no procurement and supply of necessary materials for construction. Therefore, so far as pure labour contract work, it is outside taxation and levy of tax on the assessee is illegal and arbitrary.

3. The Tribunal, after referring to two decisions of the Karnataka High Court and also referring to the definition of "works contract" under section 2(iv) of the Act, opined that contractor was entitled to opt for payment of tax at compounded rate of three per cent, of the whole contract amount as provided under section 8(a)(i) of the Act. According to the Tribunal, whole contract amount means the works executed by the assessee in works contract and pure labour contract is exempted from tax liability because no material is involved in execution of labour contract from the side of the assessee. According to them, as details of works contract could be bifurcated for each year as per the turnover details, they remanded back all the four matters to the assessing authority to verify the documents and allow the claim as per the documents produced.

4. Aggrieved by this, State is before us contending that reading of sections 6(1) and 8(a)(1) of the Act clearly indicate how computation of tax under both claims are operating in different areas. According to learned Government Pleader, exemptions and deductions which are provided in one of the methods cannot be made applicable to the other method unless there is a specific provision for the same. This is in so far as section 6(1) of the Act. So far as concessional rate benefit under section 8(a)(i) with respect to payment of tax on the whole contract amount they contend that there is no scope for bifurcating the works contract and other contract. According to learned Government Pleader, whole contract amount would mean whatever amount received towards contract and if a dealer/assessee enters into contract which involves pure labour contract, then alone, he is entitled for exemption he has sought.

5. In O. T. Rev. Nos. 130 of 2013, 22 of 2014, 23 of 2014 and 24 of 2014 following substantial questions of law are raised in these revisions for consideration by this court:

"(a) Ought not the Tribunal have found that regular assessment under section 6(1)(e) and compounding under section 8(a)(1) are two different schemes and the methods prescribed for computation of tax in one of the scheme cannot be made applied for the computation of tax as per the other scheme?

(b) Ought not the Tribunal have found that the assessee opted for compounding for the relevant year is bound to pay tax at the appropriate rate on the "whole contract amount" for the year?

(c) Ought not the Tribunal have found that exemptions and deductions provided in the regular scheme of assessment are not applicable for the compounding scheme of assessment?

(d) Are not the findings of the Tribunal erroneous, arbitrary and perverse in nature so far as it says that receipt from labour portion/contract shall not be reckoned for the purpose of levy of tax under section 8(a)(1) of the KVAT Act?"

6. In O. T. Rev. No. 57 of 2013 following substantial questions of law are raised in these revisions for consideration by this court:

"(1) Whether, on the facts and circumstances of the case, the Appellate Tribunal was correct in law in confirming the demand of tax on the amount received by the petitioner for doing labour work at the work site of the Indian Oil Corporation, particularly considering the fact that the said work is not taxable under the charging section of the Kerala Value Added Tax Act and as per rule 9(4) of the Kerala Value Added Tax Rules?

(2) Whether, on the facts and circumstances of the case, the Appellate Tribunal was correct in law in not considering the question that as per the 46th Constitution Amendment Act State Legislature has the power to levy tax only on the composite works contract involving sale of goods and supply of labour and service and therefore the contract referred in section 8 of the Kerala Value Added Tax Act is only the works contract and not labour contract?"

7. In O. T. Rev. Nos. 134 of 2013, 135 of 2013 and 136 of 2013, the second question of law is the same as in O. T. Rev. No. 57 of 2013, but the first question reads as under:

"Whether, on the facts and circumstances of the case, the Appellate Tribunal was correct in law in confirming the demand of tax on the amount received by the petitioner for doing labour work, particularly considering the fact that the said work is not taxable under the charging section of the Kerala Value Added Tax Act and as per rule 9(4) of the Kerala Value Added Tax Rules the said amount will not come under the purview of turnover?"

8. So far as O. T. Rev. No. 57 of 2013, the dealer/assessee is before us. In this case, final order pertains to the assessment year 2008-09. He opted for payment of tax at compounded rate of three per cent, under section 8(a)(i) of the Act. He also claimed exemption of labour and other charges as per section 10 of the Act.

The assessing authority rejected the claim of exemption, as the assessee had opted for payment of tax at compounded rate, especially when, assessment is completed on the best judgment, levying tax at three per cent, on the entire contract amount and question of extending exemption towards labour contract would not arise. Of course, this came to be challenged before the Commissioner (Appeals). Appeal came to be allowed permitting Rs. 54,47,422 as the amount paid towards labour charges while complying with the terms of agreement with Indian Oil Corporation to handle cylinders, loading, unloading, cleaning, house keeping, etc. According to the first appellate authority since no material involvement exists, such exemption must be extended. Aggrieved by the same, the Revenue approached the appellate authority. The Appellate Tribunal opined that there is no question of application of rule 9(4) as compounded rate of tax is to be paid on contract amount and there is no mentioning of any turnover in section 8(a), therefore, proceeded to allow the appeal. To arrive at this opinion, they referred to the cases decided by the honourable High Court of Madras. Ultimately, opinion of the assessing officer was upheld.

9. In O. T. Rev. Nos. 134 of 2013, 135 of 2013 and 136 of 2013, the pensioners are assesseees who are aggrieved by the opinion of the Tribunal confirming levying of tax by assessing officer. They contend, State Legislature can levy tax on works contract only in cases which involves transfer of property and not otherwise. The contract referred to in section 8 of the Act is composite work. Contract which is taxable under section 6 of the Act and rule 9(4) of the KVAT Rules, 2005 clearly states that the amount payable for a contract which does not involve any transfer of goods shall not be deemed to be turnover is the argument advanced. Further contention is, as per charging section 6 of the Act, only composite works contract is liable to be taxed. Therefore, labour contract is not taxable under section 8 of the Act. The revision petitioner/assessee places reliance on the case of State of Kerala v. Builders Association of India [1997] 104 STC 134 (SC) to contend that compounded tax provided is another mode for payment of tax under section 6 of the Act therefore under section 8 of the Act, payment of tax at the compounded rate is the same as that of the charging section 6 except for the fact that it is a different method of computation to arrive at the same destination.

10. We have gone through the provisions of section 6 as well as section 8(a)(i) of the Act which read as under:

6. Levy of tax on sale or purchase of goods.--(1) Every dealer whose total turnover for a year is not less than ten lakhs rupees and every importer or casual trader or agent of a non-resident dealer or dealer in jewellery of gold, silver and platinum group metals or silver articles or contractor or any State Government, Central Government or Government of any Union Territory or any Department thereof or any local authority or any autonomous body whatever be his total turnover for the year, shall be liable to pay tax on his sales or purchases of goods as provided in this Act. The liability to pay tax shall be on the taxable turnover,--

...

(e) in the case of transfer of goods involved in the execution of works contract where transfer is in the form of goods, at the rates specified for such goods, clause (a) or (d) above, as the case may be.

(f) in the case of transfer of goods involved in the execution of works contract where the transfer is not in the form of goods, but in some other form, at the rate of 12.5 per cent, and when the transfer is in the form of goods at the rates prescribed under the respective Schedules.

8. Payment of tax at compounded rates.--Notwithstanding anything contained in section 6,--

(a)(i) any works contractor not being a dealer registered under the provisions of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), and who is not an importer may, at his option, instead of paying tax in accordance with the provisions of the said section, pay tax at three per cent, of the whole contract amount."

11. In State of Kerala and another Vs. Builders Association of India and others, , their Lordships were considering the Kerala General Sales Tax Act. In that case the petitioners were contractors who had not opted to composition system provided under sub-sections (7) or (7A) of section 7 of the KGST Act. Further, there was challenge to the validity of section 5(1)(iv) of the KGST Act. While referring to the provisions of sections 5(1)(iv), 7(7), (7A), (11) and (12) of KGST Act read with rule 22A of the KGST Rules, their Lordships were considering whether whole amount of contract in the case of civil works and at three quarters of the normal rate on the whole of the contract amount in the case of other works contract were within the competence of State Legislature. Their Lordships opined that alternate method of taxation provided being optional and subject to conditions provided under the subsections, there is no compulsion on any contractor to opt for the method of taxation provided under sub-section (7) or sub-section (7A). The rates provided under those provisions would apply only if the contractor opts within the choice and pleasure of him. While referring to these provisions, their Lordships opined that a contractor having voluntarily and with full knowledge of alternate method of taxation, after opting to pay tax at compounded rate, cannot again raise an argument that he has to be heard on the question of validity provided under sub-sections or rules provided thereunder. The method of taxation introduced by sub-sections (7) and (7A) of the KGST Act is in the nature of composition of tax payable under section 5(1)(iv). This is nothing but a convenient, hassle free and simple method of assessment. By this method contractor saves himself the bother of book keeping, assessment, etc. Therefore, there is no necessity to enquire and determine the extent or value of the goods which have been transferred in the course of execution of works contract, the rate applicable to them and so on. In that context, they opined that object of introducing payment of compounding rate of tax, section is the same as

that of the charging section and the compounding provision is only a different route to arrive at the same destination. According to the learned counsel representing dealer/assessee, whatever is applicable to regular charging section, deserves to be applied to concessional provision, hence they are entitled to bifurcate the contract works and claim exemption and then opt to pay tax at a particular rate.

12. They also referred to H.S. Chandra Shekar Hande Vs. State of Karnataka, . Section 17(6) of the Karnataka Sales Tax Act provides for payment of tax on the total consideration of the works contract. In the said case, the assessee was engaged in the business activity of fabrication and erection of structural works. He filed annual return for the year 1999-2000 showing the total consideration received as Rs. 37,62,208.51. He claimed exemption on the turnover of Rs. 23,71,721.52 under the head labour and other like charges involved in execution of works contract. The assessing authority held that exemption could have been granted if the assessee has been assessed to tax under regular charging section 5B of the Karnataka Sales Tax Act, but having opted for composition rate of tax where total consideration is the criteria for levy of tax, such exemption was denied by the assessing officer. Ultimately, the matter came up before the High Court of Karnataka for consideration. Their Lordships after referring to different provisions and charging section under the Karnataka Sales Tax Act opined as under (page 237 in 57 VST):

"From the aforesaid facts it is clear that the assessee, a dealer, has filed return showing the total turnover as Rs. 37,62,208.51. He is engaged in structural works as a works contractor. He has opted for payment of composition scheme under section 17(6) of the Act. Otherwise under section 5B in respect of the total turnover of the works contract he was expected to maintain accounts showing labour charges and the value of the goods sold and he had to pay sales tax on the value of the goods sold. It is to overcome such difficulties he has opted for composition scheme under section 17(6). The tax payable under section 17(6) is on the total consideration of the works contract which necessarily includes labour charges. The assessee would not be entitled to any exemption in respect of that labour charges which is included in the works contract when once he opts for composition of tax under section 17(6). However, if he enters into purely labour contract where no aspect of sale is involved and consideration received in the labour contract is outside the claim of Sales Tax Act, no portion of that labour charges is liable to tax under the KST Act. If the total turnover which he has declared in the return has both these components, i.e., consideration received in a pure labour contract and the consideration received in the works contract, he is liable to pay tax under section 17(6) only in respect of works contract. In respect of the consideration received in the labour contract, no tax needs to be paid. But this is a matter which has to be gone into by the assessing authority with reference to the contract to be produced and the accounts maintained by the assessee to demonstrate that he is involved both in works contract as well as in labour contract. In other words a works contract is a composite contract which

includes payment of labour contract plus payment of material. In respect of that labour charges under section 17(6) tax is payable on the total consideration in the works contract. If the labour contract is an individual contract where the component is only labour, no tax is payable."

13. Placing reliance on these two decisions, learned counsel appearing for the assessee/dealer contends that the assessee/dealer is entitled to claim exemption on the value of turnover, so far as labour charges. As against this learned Government Pleader contends that the word used under section 8(a)(1) of the Act is very clear and tax is payable on the whole contract amount and question of bifurcation of contract amount is not possible. According to him, "whole contract amount" means whatever is received towards a particular contract. He further contends that very purpose of introducing section 8(a)(i) of the Act is to create hassle-free and concessional rate of tax payable by a dealer/assessee. Therefore, intention of the Legislature was not to give exemption on the turnover applicable under regular charging section and then opt for concessional rate of tax as provided under section 8(a)(1). Therefore, according to him, a dealer who opts to pay tax under section 8(a)(1) is liable to pay tax on the entire amount received towards a particular contract.

14. On going through the provisions, i.e., charging section 6 and concessional rate of tax payable under section 8(a)(1), one has to understand how these two provisions apply and under what circumstances. If a dealer claims exemptions on various categories of turnover including labour charges while filing returns under section 6 of the Act, one can opine that there is reasonableness in such claim as the dealer is subjecting himself for regular process of assessment where he has to pay higher rate of tax than provided under section 8(a)(1) of the Act. Once he has chosen to come under section 8(a)(1) seeking payment of tax at concessional rate whether Legislature intends to give double benefits to dealers, i.e., to claim exemption from turnover and also concessional rate of tax, definitely, the specific word "used" at section 6 and also section 8(a)(1) of the Act had to be taken into consideration. Under section 8(a)(1), there is no reference to the word "turnover" at all. It refers to tax payable on the whole contract amount. If one understands "whole contract amount" in proper sense, definitely, there will be clear understanding under what circumstances section 8 applies and the circumstances enumerated under section 6. They are totally different from each other. Irrespective of the provisos under section 6 including exemption of value of turnover on certain items, one has to proceed with computation of tax only in terms of section 8, once they intend to have the benefit of concession. As section 8 has hassle-free process, definitely, one has to depend upon the words used in the section and not other provisions of the Act.

15. Then coming to payment of tax on "the whole contract amount", it has to be analysed with reference to facts and circumstances of each case. There may be a dealer who does civil contract works belonging to either individuals or institutions. Whole contract work would definitely refer to a particular

transaction, i.e., contract of a particular work in its entirety irrespective of the fact whether such contract was bifurcated into two different agreements, one with reference to labour and the other for procurement and supply of materials or under the same agreement two different rates, one for labour work and another for supply of materials. Therefore, we are of the opinion that whole contract amount would refer to entire value of contract. Section 6(1) is a regular assessment process where taxable turnover is fixed after giving deductions and exemptions permissible therein. Depending upon the taxable turnover arrived at, tax is computed at appropriate rate. So far as section 8(a)(1), it is a compounding scheme under which assessee chooses to pay tax at concessional rate on the whole contract amount without reference to turnover.

16. Coming to sections 6 and 8 of the Act, one has to see intention of the Legislature in introducing section 8(a)(1). It is well-settled, section 8(a)(1) is not unconstitutional, as it is another mode of assessment of tax which is hassle-free without much burden on the assessee like maintaining the accounts, etc. He can choose to pay tax under section 8(a)(1) at much lesser rate than what is provided under section 6. Reading of section 6 and related clauses as stated above, clearly indicate, dealer can claim exemption on certain items if he chooses to file returns under regular process of assessment. There is no compulsion that assessee has to pay higher rate of tax than provided under section 8(a)(i) of the Act. Once he opts to subject himself to process of assessment under section 8(a)(i) whether Legislature intends to give any benefits, i.e., to pay lesser rate of tax. Therefore, one has to carefully analyse and understand the words used at section 6 and also at section 8(a)(i) of the Act. Section 8(a)(i) only refers to tax payable on the whole contract amount without referring to turnover. Once he chooses to seek benefit under section 8 to pay concessional rate of tax, it has to be on the whole contract amount which would mean value of entire contract done by him in respect of a particular contract or with respect to the work done in a year, without any bifurcation claiming exemption. But, in an instance where during an assessment year the assessee does only labour contract for one person and composite work for another person, there is no obligation to pay compounded tax for the said labour work, but in respect of the composite work, the compounded tax has to be paid.

17. So far as the revisions filed by the Revenue, they contend that a works contractor, having opted for compounding under section 8(a)(i) of the Act, is not entitled to claim exemption towards labour charges during a particular assessment year. The assessee can choose method of computation of tax either under section 6(1) or section 8(a)(i) of the Act. There is no question of interchanging these provisions, as both the schemes are entirely different from each other and method of computation is entirely different.

18. In the present case, the main contention raised by the assessee in O. T. Rev. No. 57 of 2013 is that when the labour work at the work site of Indian Oil Corporation is a separate contract which has nothing to do with the other works

contract undertaken by the assessee, the said work is not taxable under the charging section of the Act. Annexure-A is the notice inviting tender and annexure-B is the contract. Similarly, in other cases also the assessee contends that he was carrying out only labour works. Having regard to our finding that the whole contract amount referred to in section 8 of the Act is the whole contract amount for a particular work or work done in a year, if such work does not come within the definition of "works contract" under section 2(lv) of the Act taxable under section 6(1)(e) or (f), it has to be verified whether the labour work undertaken by the assessee in the work site of Indian Oil Corporation is purely a labour work or whether it comes under the category of "works contract" liable to tax. If it is purely a labour work, the question of taxation does not arise. Hence a reference to the terms and conditions of the contract has to be considered before arriving at such a conclusion. But, in regard to O. T. Rev. Nos. 134 of 2013, 135 of 2013 and 136 of 2013, no such material is produced to show that he had done a separate labour contract. In those cases the Assistant Commissioner (Appeals) has come to a finding that no evidence was placed before it to challenge the findings of the assessing officer. This factual finding is confirmed by the Tribunal. Hence we do not intend to interfere with the said findings.

19. But, as far as O. T. (Rev) No. 57 of 2013 is concerned, materials have been placed on record by way of annexures A and B to indicate that with reference to the contract with Indian Oil Corporation, the same was a contract for handling of cylinders, loading/unloading, haulage, cartage, clearing, house keeping and miscellaneous works at the Indane Bottling Plant at Udayamperoor, Cochin. Prima facie, it does not involve the works contract attracting taxability under the Act and therefore the liability to pay compounded tax does not arise in respect of the said contract amount. The Assistant Commissioner (Appeals), having verified the documents, found that the contract does not involve any supply of materials at all and therefore there is nothing liable to be taxed under the Act. Hence the first appellate authority deducted the said contract amount of Rs. 54,47,422 from the taxable turnover.

20. In the appeal filed by the Revenue, the Tribunal found that there was no necessity to work out the taxable turnover as compounded tax is to be paid on the total value of the works contract or contracts as held in the judgment in Taher Ali Industries and Projects (P) Ltd. Vs. State of Tamil Nadu and Another, .

21. We have already dealt with the issue, as to the circumstances under which compounded tax is payable. The liability to pay compounded tax arises only if there is a liability to pay tax. If it is a composite contract involving a labour contract and supply of materials, the assessee will become liable to pay tax. If the labour contract is pure and simple there is no liability to pay tax and consequently there is no liability to pay compounded tax as well. Under these circumstances, we are of the view that the assessing officer has to verify the contract in question especially the contract with Indian Oil Corporation and verify whether it amounts to works contract or a pure and simple labour contract. As

far as the appeals filed by the Revenue are concerned, the Tribunal has remitted the matter back to the assessing officer to consider, whether the contract involves labour contract only. Having regard to our aforementioned findings, those revisions are to be dismissed. In the result,

(i) O. T. Rev. No. 57 of 2013 is allowed directing the assessing officer to verify the terms of the contract before passing the assessment orders.

(ii) O. T. Rev. Nos. 134 of 2013, 135 of 2013 and 136 of 2013 filed by the assesseees are dismissed.

(iii) O. T. Rev. Nos. 130 of 2013, 22 of 2014, 23 of 2014 and 24 of 2014 filed by the State are dismissed.