(2025) 02 KL CK 1281

In the High Court Of Kerala

Case No : S.T.Revision Nos.2, 3, 4, 5 Of 2023

Jayadevan Kunjukrishnan APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 17-02-2025

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 7(1)(a)

Citation : (2025) 02 KL CK 1281

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Easwaran S., J

Bench : Division Bench

Advocate : Rahul A., S.Anil Kumar, Sabu C.J, M.Rajagopal, Aparna Anil, Resmitha Ramachandran

Final Decision : Dismissed

Judgement

Dr. A.K.Jayasankaran Nambiar, J.

1. In all these S.T.Revisions filed by the assessee, what is impugned is the common order of the Kerala Value Added Tax Appellate Tribunal, Thiruvannathapuram, dismissing the appeals preferred by the petitioner for the assessment years 2009-2010, 2010-2011, 2011-2012 and 2012-2013 under the Kerala General Sales Tax Act (for short, the KGST Act).

2. The brief facts necessary for the disposal of these S.T.Revisions are as follows:

The petitioner is a proprietor of a bar hotel and registered as a dealer under the KGST Act. During the assessment years 2009-2010 to 2012-2013, the petitioner, without formally opting for payment of tax on compounded basis in terms of Section 7(1)(a) of the KGST Act, nevertheless paid tax on compounded basis along with the monthly returns that were filed for the said years. The said fact is borne out from the copies of the returns that have been made available before us for perusal by the learned Government Pleader through the affidavits filed in these revision petitions. A perusal of those returns clearly shows that the computation and payment of tax was on compounded basis. Details of the

Cheque/Demand Draft by which the tax was paid are also shown in the returns.

3. The Appellate Tribunal, by the order impugned in these revisions, found that since the petitioner had remitted tax on the basis of the compounding provisions, he could not thereafter turn around and contend that since he had not formally filed an application for payment of tax on the compounded basis, the department had not accepted the tax on compounded basis, and therefore the latter was obliged to assess him under the normal provisions of the KGST Act.

4. During the course of the hearing, we have been shown a copy of the judgment of a Division Bench of this Court in State of Kerala v. Kalyanaraman [2009 (3) KLT SN 31] (C. No.34) wherein, in almost similar circumstances the Division Bench of this Court found that once an assessee has acted in accordance with the compounded provisions and remitted tax for the whole year along with monthly returns strictly in terms of the compounding provisions, he cannot back track later on and request the assessing officer to complete the assessment based on the turn over returned by him. In particular, it was found by the Division Bench that the offer to pay tax at compounded rate gives an immunity to an assessee from inspection and other interference by the department in the course of his business. A regular assessee who is not covered by the scheme of payment of tax on compounded basis can be subject to inspection at any time during the year. However, in cases where tax is accepted pursuant to an application filed for compounding, the department has no right to inspect or harass the assessee. The Court therefore found that after availing immunity in these forms, the assessee could not, after the closure of the year, resile from the offer he made for payment of tax at compounded rate.

5. We find that the aforesaid judgment squarely applies to the facts in the instant case and hence, the impugned order of the Appellate Tribunal does not warrant any interference in these proceedings. Accordingly, we dismiss these S.T.Revisions by answering the questions of law raised therein against the petitioner/assessee and in favour of the respondent/State.