(2024) 02 KL CK 0121

In the High Court Of Kerala

Case No : Other Tax Revision No.6 Of 2024

Jose Thomas APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 14-02-2024

Acts Referred:

Constitution of India, 1950 — Article 265
Kerala Value Added Tax Act, 2003 — Section 6, 6(1), 6(1A), 8

Citation : (2024) 02 KL CK 0121

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Dr. Justice Kauser Edappagath, J

Bench : Single Bench

Advocate : Jazil Dev Ferdinanto, Jose Jacob, Anne Maria Mathew, V.K. Shamsudheen, V.K. Shamsudheen

Final Decision : Disposed Of

Judgement

Dr. A.K.Jayasankaran Nambiar, J.

1. The sole issue that arises for consideration in this O.T. Revision is the inclusion of amounts collected by the petitioner towards maintenance fund and sinking fund during the assessment year 2011- 2012, from persons on whose behalf the petitioner had constructed apartments, in the taxable turnover for the purposes of the KVAT Act,

2. We notice that on the said issue, by our earlier order dated 29.9.2023, in O.T. Rev. Nos. 87 and 93 of 2018, we found as follows at paragraphs 7 and 8 of the order:

“7. On a consideration of the facts and circumstances of the case, we find that on the issue of whether KVAT at the compounded rate is payable on service tax amounts and one time building tax amounts collected and paid by the petitioner on behalf of his customers and on the maintenance fund and sinking fund amounts collected by the petitioner from customers on behalf of the owners' association to be subsequently formed and shown in its accounts under current liabilities, we are of the view that although the provision for payment of tax on compounded basis for works contractors provides that the contractor has an option of paying tax at 3% of the whole contract amount instead of paying tax in accordance with the provisions of Section 6 of the KVAT Act, the expression “whole contract amount” for the purposes of the Section is clarified as not including the amount paid to sub contractors for execution of a portion of works contract if the sub contractor is a registered dealer liable to pay tax under sub section (1) or sub section (1A) of Section 6, and the contractor claiming deduction in respect of such amount furnishes certificates in such form as may be prescribed. The definition of “whole contract amount” is couched in exclusive phraseology and does not clarify what is included within the ambit of the phrase. The learned Government Pleader Dr. Thushara James would contend that in the absence of any specific exclusion from the definition of “whole contract amount”, all receipts under the contract would come within the ambit of the phrase and this would include service tax amounts, one time building tax amounts as also maintenance fund and sinking fund amounts collected by the petitioner from his customers, although subsequently paid to different statutory authorities and the owners' association. The learned counsel for the petitioner Sri. Jose Jacob would however point out that reading the definition of “whole contract amount” solely in terms of the explanation would violate the scheme of taxation under the KVAT Act and bring to tax amounts that have no nexus with the subject sought to be taxed. In particular, he submits that amounts collected by the petitioner as a “pure agent” of the customer and paid over to the respective statutory authorities, such as authorities entrusted with the administration of service tax and building tax, and the owners' association in respect of maintenance charges and charges towards sinking fund, cannot, by any stretch of imagination, be included within the phrase “whole contract amount” for the purposes of Section 8 of the KVAT Act.

8. On a consideration of the rival submissions, we find force in the contention of the learned counsel for the petitioner for, we must remind ourselves that the provisions of a taxing statute have to be read in the backdrop of Article 265 of the Constitution of India, which clearly mandates that there shall be no levy and collection of tax except by the authority of law. Read in the backdrop of the constitutional provision, therefore, Section 8 of the KVAT Act cannot be taken as authorising the levy of tax on any amount that does not bear nexus with the construction activity involved in a works contract in the instant case. Statutory levies and amounts paid by the petitioner as pure agent of the customer, who is legally obliged to bear the burden of those levies and expenses, cannot be included in the contractual receipts of the petitioner for computing the “whole contract amount” for the purposes of Section 8 of the KVAT Act. The assessment of the petitioner under Section 8 of the Act has to be re-done after excluding such amounts from the computation of whole contract amount. Thus, we remand the said issues to the Assessing Authority for the purposes of excluding those amounts, in the nature of taxes and re-imbursable expenses, which the

petitioner can prove to the satisfaction of the said authority to be expenses incurred by the petitioner as a pure agent for his customers. Accordingly, the Assessing Authority shall exclude those amounts from the computation of “whole contract amount”, in respect of which there is documentary proof produced by the petitioner to show that the exact amount collected from the customer has been paid to another authority such as the service tax/building tax authority or the owners' association of the building in question.”

Taking note of the said order and the findings therein as extracted above, we dispose this O.T. Revision by setting aside the impugned order of the Tribunal to the extent it holds that the maintenance fund and sinking fund collected from the customers on behalf of the owners' association cannot be deducted from the taxable turn over and remand the matter back to the assessing authority for determination of the factual issues as indicated in the extracted portion of the order referred above.

