(2015) 01 KL CK 0242

In the High Court Of Kerala

Case No : O.T. (Rev) Nos. 178, 179, 180 and 181 of 2014

Keltron Employees Co-Operative Society Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Citation : (2015) 01 KL CK 0242

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : R. Ramadas, for the Appellant; S. Sudheeshkumar, Sr. Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anil K. Narendran, J—The assessee is the revision petitioner in all these O.T. Revisions. O.T. Rev. Nos. 178/2014 and 179/2014, arising out of T.A. (VAT) Nos. 1463/2013 and 1462/2013, on the file of the Kerala Value Added Tax Additional Appellate Tribunal, Palakkad, are in relation to the assessment year 2011-12, challenging the imposition of penalty under Sub-section (7) of Section 22 of the Kerala Value Added Tax Act, 2005 (hereinafter referred to as ''the Act'') and the assessment made under Sub-section (1) of Section 25 of the said Act, respectively. Similarly, O.T. Rev. Nos. 180/2014 and 181/2014, arising out of T.A. (VAT) Nos. 1465/2013 and 1464/2013, on the file of the said Tribunal, are in relation to the assessment year 2012-13, challenging the imposition of penalty under Sub-section (7) of Section 22 of the Act and the assessment made under Sub-section (1) of Section 25 of the Act, respectively.

2. The assessee is a dealer paying presumptive tax under Sub-section (5) of Section 6 of the Act. The total turnover conceded by the assessee for the financial year 2011-12 was Rs. 63,92,576/-. A dealer paying presumptive tax under Sub-section (5) of Section 6 of the Act whose total turnover exceeds 60 lakh rupees during the course of a year shall intimate the said fact to the assessing authority within the prescribed time limit and pay tax at the regular

rates from the next quarter onwards. The assessee, instead of paying tax at the regular rates, paid Rs. 6,710/-, Rs. 758/-, Rs. 505/- and Rs. 505/-, respectively for the four quarters of the assessment year 2011-12 and Rs. 500/- each for the next two quarters of the assessment year 2012-13. Notices dated 23/11/2012 were issued by the Assessing Authority, for an amount of Rs. 1,68,996/-, under Sub-section (1) of Section 25 of the Act, being the difference of tax payable for the months of April, 2012 to September, 2012 and proposing to impose a penalty of Rs. 5,06,988/- for the said period, under Sub-section (7) of Section 22 of the Act. Similarly, for the four quarters of the assessment year 2011-12, notices dated 4/1/2013 were issued by the Assessing Authority, for an amount of Rs. 78,481/-, under Sub-section (1) of Section 25 of the Act, being the difference of tax payable and proposing to impose a penalty of Rs. 2,35,383/- for the said period, under Sub-section (7) of Section 22 of the Act.

3. The assessee submitted reply dated 5/12/2012 for the assessment year 2012-13, which was followed by reply dated 4/1/2013 for the assessment year 2011-12. The assessee contended that, it is eligible for input tax credit by virtue of the amendment made to Sub-section (5) of Section 6 of the Act, by the Finance Act of 2011. Regarding the penalty proposed the assessee contended that, there is no concealment of turnover and the assessing authority has accepted the return filed for the respective quarters of the assessment years 2011-12 and 2012-13, under Sub-section (5) of Section 6 of the Act. It is further contended that there is no willful disobedience of any of the provisions of the Act, with a view to defraud the revenue and there is only a procedural irregularity, which will not come within the ambit of Sub-section (7) of Section 22 of the Act.

4. The assessing authority by proceedings dated 15/1/2013 completed the assessment for the year 2011-12 under Sub-section (1) of Section 25 of the Act, assessing the total tax payable at Rs. 38,352/- and the balance tax payable at Rs. 29,874/-. The assessing authority concluded that, the assessee is not eligible for input tax credit under the 6th proviso added to Subsection (5) of Section 6 of the Act, by virtue of the Kerala Finance Act, 2011, as the said provision is applicable only to dealers who switch over to VAT suo moto. Here the dealer has not opted for switch over to VAT even after the turnover exceeded 60 lakh rupees for the year 2011-12. By another proceedings dated 15/1/2013, the assessing authority imposed a penalty of Rs. 89,622/- on the assessee, under Sub-section (7) of Section 22 of the Act, being thrice the amount of tax payable for violation of the statutory provisions under Sub-section (5) of Section 6 of the Act. The assessing authority concluded that, the contention of the assessee that there is only a procedural irregularity which will not come within the ambit of Sub-section (7) of Section 22 of the Act can only be rejected. According to the assessing authority, since there is clear violation of the provisions laid down under Sub-section (5) of Section 6 of the Act, it is a fit case to impose penalty under Sub-section (7) of Section 22 of the Act. Similarly, for the two quarters of the assessment year 2012-13, the assessing authority by proceedings dated 21/1/2013 completed the assessment under Sub-section (1) of Section 25 of the

Act, assessing the balance tax payable at Rs. 1,61,915/-. By another proceedings dated 21/1/2013, the assessing authority imposed a penalty of Rs. 4,85,745/- on the assessee, under Sub-section (7) of Section 22 of the Act, being thrice the amount of tax payable for violation of the statutory provisions under Sub-section (5) of Section 6 of the Act.

5. Aggrieved by the assessment orders passed under Sub-section (1) of Section 25 of the Act, for the years 2011-12 and 2012-13, the assessee filed VATA Nos. 315/2011 and 316/2011 before the Deputy Commissioner (Appeals)-II, Kozhikode. Similarly, the assessee filed VATA Nos. 317/2011 and 318A/2011 before the 1st appellate authority, challenging the penalty imposed under Sub-section (7) of Section 22 of the Act, for the years 2011-12 and 2012-13. The 1st appellate authority by order dated 28/6/2013 dismissed VATA Nos. 315/2011 and 316/2011, thereby confirming the assessment made by the assessing authority for the years 2011-12 and 2012-13. Similarly, by another order dated 28/6/2013, the 1st appellate authority dismissed VATA Nos. 317/2011 and 318A/2011, thereby confirming the penalty imposed by the assessing authority for the years 2011-12 and 2012-13. Aggrieved by the orders in VATA Nos. 315/2011 and 316/2011, the assessee filed T.A. (VAT) Nos. 1462/2013 and 1464/2013 before the Kerala Value Added Tax Additional Appellate Tribunal, Palakkad. Similarly, the assessee filed T.A. (VAT) Nos. 1463/2013 and 1465/2013 before the Tribunal challenging the orders in VATA Nos. 317/2011 and 318A/2011. The Tribunal by order dated 28/2/2014 dismissed T.A. (VAT) Nos. 1462/2013 and 1464/2013, thereby confirming the assessment made under Sub-section (1) of Section 25 of the Act, for the years 2011-12 and 2012-13. Similarly, by another order dated 28/2/2014, the Tribunal dismissed T.A. (VAT) Nos. 1463/2013 and 1465/2013, thereby confirming the penalty imposed under Sub-section (1) of Section 22 of the Act, for the years 2011-12 and 2012-13. It is aggrieved by these orders of the Tribunal, the petitioner is before us in these Revision Petitions filed under Section 63 of the Act, raising various questions of law.

6. We heard the arguments of the learned counsel for the petitioner/assessee and also the learned Senior Government Pleader for the respondent/revenue. We have considered the rival submissions made at the Bar.

7. The assessee is a dealer paying presumptive tax under Sub-section (5) of Section 6 of the Act. As the turnover conceded by the assessee for the assessment year 2011-12 exceeded 60 lakh rupees, which the assessee failed to intimate to the assessing authority within one month of happening of such event, and paid tax at regular rates from the next quarter onwards, assessment proceedings were initiated against the assessee under Sub-section (1) of Section 25 of the Act, along with proceedings under Sub-section (7) of Section 22 of the Act for imposition of penalty.

8. Going by Sub-section (5) of Section 6 of the Act, notwithstanding anything contained in Sub-section (1), but subject to Sub-section (2), any registered

dealer not being those classified under Clauses (a) to (f) of Sub-section (5) whose total turnover for a year is below 60 lakh rupees, may, at his option, pay tax at the rate of half per cent of the turnover of sales of taxable goods as presumptive tax instead of paying tax under Sub-section (1). Prior to the amendment made to Sub-section (5) of Section 6, by the Kerala Finance Act, 2011, the total turnover for a year should be below 50 lakh rupees. Going by the 3rd proviso to Sub-section (5), a dealer shall not be eligible to opt for payment under the Sub-Section (5) if his turnover in respect of goods to which the Act applies, whether under the Act or under the Kerala General Sales Tax Act, 1963, had exceeded 60 lakh rupees during the year preceding the year to which such option relates. Prior to the amendment made to the 3rd proviso to Sub-section (5), by the Kerala Finance Act, 2011, the total turnover of the dealer should not exceed 50 lakh rupees during the year preceding the year to which such option relates.

9. In terms of Sub-rule (7) of Rule 17 of the Kerala Value Added Tax Rules, 2005 (hereinafter referred to as ''the Rules''), every application for registration, in the case of dealers opting for payment of presumptive tax, shall be made in Form No. 1A. The registering authority on receiving such application, after making such enquiries as it may consider necessary, register the dealer and grant him a certificate of registration under Sub-rule (14) of Rule 17, in Form No. 4A. The certificate of registration issued in Form No. 4A to the dealers opting for presumptive tax stipulates that, such registration is subject to the condition that, in case the turn over exceeds the limit prescribed under Sub-section (5) of Section 6 of the Act during the course of any financial year, the fact shall be intimated to the assessing authority within 10 days of happening of such event. The application for registration in Form No. 1A and the certificate of registration in Form No. 4A are replaced with Form No. 1 as in Annexure I and Form No. 1A as in Annexure II to Circular No. 5/2011 dated 31/3/2011, with effect from 1/4/2011, on introducing e-Registration facility to the traders.

10. As per Section 11 of the Act, subject to other provisions of this section, any registered dealer, liable to tax under Sub-section (1) of Section 6, shall be eligible for input tax credit. Going by Sub-section (4) of Section 11 of the Act, unregistered dealers or dealers paying presumptive tax under Sub-section (5) of Section 6 or dealers paying compounded tax under Section 8 or dealers who transfer the right to use goods under Clause (c) of Sub-section (1) of Section 6 shall not be eligible for for input tax credit. But, by the Kerala Finance Act, 2011, 6th proviso was inserted to Sub-section (5) of Section 6 of the Act, which provides that, notwithstanding anything contained in the Act or rules made thereunder, if the turnover of a dealer, who opted for payment of tax under Sub-section (5), has exceeded the turnover limit during the course of a year, he shall be eligible for input tax credit on the turnover in excess of 60 lakh rupees. Going by the ''Note'' inserted, by the Kerala Finance Act, 2012, the 6th proviso shall be deemed to have come into force on and from the 1/4/2005, irrespective of any amendments made in the turnover limits specified in Sub-section (5).

11. Rule 12 of the Rules, 2005, deals with determination of input tax credit in respect of opening stock. Going by Sub-rule (7), where a dealer who had opted for payment of tax under Subsection (5) of Section 6 or under Section 8 changes over to the payment of tax under Sub-section (1) of Section 6, he shall submit an application in Form No. 25A along with a stock inventory on the date of change over, duly certified by a Chartered Accountant or a Cost Accountant, where the dealer is covered by the provisions of Section 42, and a statement of the purchase bills issued by registered dealers paying tax under Subsection (1) of Section 6, within fifteen days from the date of change over. As per Sub-rule (8) of Rule 12, where the dealer referred to in Sub-rules (7) or (7A) has submitted the statements as required by the said sub-rule, the assessing authority shall verify the claim and, where it is satisfied that the claim is in order, permit the dealer to claim input tax credit in respect of such goods held as opening stock in three equal monthly installments commencing from the return period subsequent to the date of order allowing such input tax credit.

12. Sub-section (7) of Section 22 of the Act, deals with imposition of penalty. Going by the said Sub-section, where on scrutiny of returns or verification of accounts in any proceedings under the Act, in respect of dealers paying tax under Sub-section (5) of Section 6, it is found that the amount of tax, if any, paid by such dealer is less than the amount of tax he is liable to pay on finalising such proceedings, the assessing authority shall direct the dealer to pay difference of tax between the amount of tax already paid and that fixed in such proceedings, together with thrice the amount of such difference as penalty. Going by Subsection (9), notwithstanding anything contained in the Act, where an offence has been detected under the Act in respect of a return filed by a dealer or otherwise and proceedings initiated under the Act, the dealer shall not be permitted to revise the return till such proceedings are finalised.

13. In the case on hand, the turnover conceded by the assessee, who was a dealer paying presumptive tax under Subsection (5) of Section 6 of the Act, exceeded 60 lakh rupees during the year 2011-12. The assessee failed to intimate the said fact to the assessing authority within the prescribed time limit and did not change over to payment of tax at regular rates from the next quarter onwards. It was in such circumstances, assessment proceedings were initiated against the assessee under Sub-section (1) of Section 25 of the Act, along with proceedings under Sub-section (7) of Section 22 of the Act for imposition of penalty.

14. Sub-section (5) of Section 6 of the Act permits small dealers, whose total turnover for a year is below 60 lakh rupees, to opt for payment of presumptive tax at the rate of half per cent of the turnover of sale of taxable goods, instead of paying tax under Sub-section (1) of Section 6 of the Act. Presumptive tax is a simplified provision made available to small dealers subject to certain conditions. Such dealers are not liable to file usual monthly returns in Form No. 10 and pay tax at the scheduled rates. If any of the conditions is violated, they will be

assessed for payment of tax as a normal dealer and they have to pay tax accordingly. Going by the 3rd proviso to Sub-section (5), a dealer shall not be eligible to opt for payment of presumptive tax under sub-Section (5), if his turnover in respect of goods to which the Act applies, whether under the Act or under the Kerala General Sales Tax Act, 1963, had exceeded 60 lakh rupees during the year preceding the year to which such option relates. As per the 6th proviso to sub-section (5), if the turnover of such a dealer has exceeded the turnover limit during the course of a year, he shall be eligible for input tax credit on the turnover in excess of 60 lakh rupees.

15. Sub-rule (7) of Rule 12 mandates that, where a dealer who had opted for payment of tax under Sub-section (5) of Section 6 or under Section 8 changes over to the payment of tax under Sub-section (1) of Section 6, he shall submit an application in Form No. 25A along with a stock inventory on the date of change over, duly certified in terms of the said sub-rule, and a statement of the purchase bills issued by registered dealers paying tax under sub-section (1) of Section 6, within the prescribed time from the date of change over. Sub-rule (8) provides that, on verification of such claims the assessing authority can permit the dealer to claim input tax credit in respect of such goods held as opening stock. Going by the relevant provisions of the Act and the Rules, which we have already referred to hereinbefore, the dealer has a statutory obligation to intimate the assessing authority, in the prescribed manner and within the prescribed time limit, the factum of his total turnover for that year having exceeded 60 lakh rupees and he has to change over to payment of tax under Sub-section (1) of Section 6 of the Act, by submitting an application in Form No. 25A along with supporting documents. Sub-rule (7) of Rule 12 of the Rules enumerates the list of documents to be submitted for the purpose of claiming input tax credit and Sub-rule (8) says about verification of such documents, the permission to be given by the assessing authority, the manner in which input tax is to be adjusted and also the date and period from which it is to be adjusted. Sub-rule (7) of Rule 12 specifically provides for what a dealer paying presumptive tax under sub-section (5) of Section 6 should do in order to claim input tax credit on his turnover crossing the limit of 60 lakh rupees. The documents required to be filed along with Form No. 25A are documents which enable the assessing authority to quantify the input tax credit. The information contained in Form No. 25A, the details of stock inventory and the statement of purchase bills issued by the registered dealers are all such details which will enable the assessing authority to quantify input tax credit. While quantifying input tax credit the assessing authority has to ascertain, among other things, as to whether any such purchase is in respect of which no input tax credit is allowable as per Clauses (a) to (o) of Sub-Section (5) of Section 10 of the Act. Further, Sub-rule (8) of Rule 12 mandates that, once the aforesaid documents are found to be in order, the assessing authority shall permit the claim of input tax credit in respect of such goods held as opening stock in three equal monthly instalments commencing from the return period subsequent to the date of order allowing such input tax

credit. As the details to be furnished in Form No. 25A and the documents required to be enclosed therewith are exclusively within the knowledge of the dealer, it is for him to initiate the procedure for claiming input tax credit, by furnishing such details in the prescribed form to the assessing authority. In Venus Marketing Vs. State of Kerala, (2012) 51 VST 377 , a Division Bench of this Court held that, a dealer who was paying presumptive tax under Sub-section (5) of Section 6 has to necessarily follow the procedure prescribed under Sub-rule (7) of Rule 12 by furnishing Form No. 25A along with statement of purchase bills for change over to the scheme of payment of tax under Sub-section (1) of Section 6. In order to avail the benefit, the dealer has to get permission from the officer who grants it under Sub-rule (8) on being satisfied after verifying Form No. 25A and the accounts furnished. The Division Bench further held that, under Sub-rule (8) of Rule 12 there is no provision to grant input tax credit to dealers claiming benefit under Sub-section (5) of Section S. 6 for any period prior to filing of Form No. 25A even in cases where the dealer was denied the benefit claimed under Sub-section (5) of Section 6 and assessed under Sub-section (1) of Section 6 of the Act for the whole year.

16. Though 6th proviso to Sub-section (5) of Section 6 of the Act, inserted by the Kerala Finance Act, 2011, with effect from 1/4/2005, entitles the dealers to claim the benefit of input tax credit on the turnover in excess of 60 lakh rupees, the said proviso, which begins with a non obstante clause, does not in any manner take away the rigor of the statutory requirement to submit an application in Form No. 25A once the total turnover of a dealer paying presumptive tax under Sub-section (5) of Section 6 has exceeded 60 lakh rupees for that year. Therefore, compliance of the statutory requirements under Sub-rule (7) of Rule 12 of the Rules by a dealer, who changes over from payment of presumptive tax under Sub-section (5) of Section 6 of the Act to payment of tax under Sub-section (1) of Section 6, is a prerequisite for the assessing authority to permit such dealer to claim input tax credit, in respect of the goods held as opening stock as on the date of such change over. Therefore, the contention of the assessee that in view of the 6th proviso to Subsection (5) of Section 6 of the Act, inserted by the Kerala Finance Act, 2011, the assessee is entitled for input tax credit even in the absence of any application in this regard before the assessing authority can only be rejected.

17. As per Sub-section (7) of Section 22 of the Act, which deals with imposition of penalty, where on scrutiny of returns or verification of accounts in any proceedings under the Act, in respect of dealers paying tax under Sub-section (5) of Section 6 , it is found that the amount of tax, if any, paid by such dealer is less than the amount of tax he is liable to pay on finalising such proceedings, the assessing authority shall direct the dealer to pay difference of tax between the amount of tax already paid and that fixed in such proceedings, together with thrice the amount of such difference as penalty. In K.V. Paul Vs. The State of Kerala, (2011) 2 KLJ 688 : (2011) 46 VST 86 a Division Bench of this Court held that, non-payment of tax under Sub-section (5) of Section 6 of the Act on any

part of the turnover even when the turnover of the dealer continues to be within the limit prescribed in the said sub-section or the failure of the dealer to switch over to the scheme of payment of tax from Sub-section (5) of Section 6 to Sub-section (1) of Section 6, on the turnover of the dealer crossing the limit prescribed in Sub-section (5) attracts levy of penalty under Subsection (7) of Section 22 of the Act. We also notice that, the opening words of Sub-section (7) of Section 22 of the Act, i.e., "where on scrutiny of returns or verification of accounts ''in any proceeding under this Act'', in respect of dealers paying tax under Sub-section (5) of Section 6" make it abundantly clear that, the levy of penalty under Sub-section (7) of Section 22 of the Act is not confined to assessment under Sub-section (3) of Section 22 alone. Therefore, the contention raised by the assessee regarding non-application of Sub-section (7) of Section 22 of the Act, since the assessment in question is completed under Subsection (1) of Section 25 of the Act, can only be rejected. Further, going by the mandate of Sub-section (7) of Section 22, the assessing authority is vested with no discretion either to reduce or waive the quantum of penalty for any violation of Subsection (5) of Section 6 of the Act.

18. It is not in dispute that, the turnover conceded by the assessee for the financial year 2011-12 has exceeded 60 lakh rupees and as such the assessee is not entitled to continue as a presumptive tax dealer under Sub-section (5) of Section 6 of the Act, paying tax at the rate of half per cent of the turnover of sale of taxable goods. The assessee neither intimated the said fact to the assessing authority nor changed over to payment of tax at regular rates, under Sub-section (1) of Section 6 of the Act, from the next quarter onwards. Instead, the assessee continued as a presumptive tax dealer, without paying tax at regular rates and enjoying the benefits intended for small dealers, which continued as such till detected by the assessing authority. This is not a mere procedural irregularity, as contended by the assessee. Therefore, we are unable to agree with the contention of the assessee that, the assessing authority imposed penalty under Sub-section (7) of Section 22 of the Act for the technical violation of Sub-rule (7) of Rule 12 of the Rules, which is unwarranted by law.

19. As we have already noticed, the certificate of registration issued in Form No. 4A (prior to Circular No. 5/2011) to the dealers opting for presumptive tax stipulates that, such registration is subject to the condition that, in case the turnover exceeds the limit prescribed under Sub-section (5) of Section 6 of the Act during the course of any financial year, the fact shall be intimated to the assessing authority within 10 days of happening of such event. Therefore, we find it difficult to accept the plea made by the assessee regarding lack of awareness of such a provision in the statue. Even otherwise, ignorance of law is no excuse (ignorantia jurist non-excusat).

20. According to the assessee, on receipt of pre-assessment notices proposing to re-open the assessment the assessee expressed willingness to pay tax under Sub-section (1) of Section 6 of the Act and sought permission to e-file the return

in Form No. 10, but no such permission was granted. Going by Sub-section (5) of Section 6, where an offence has been detected under the Act in respect of a return filed by a dealer or otherwise and proceedings initiated under the Act, the dealer shall not be permitted to revise the return till such proceedings are finalised. Therefore, the assessing authority cannot be found fault with in not permitting the assessee to revise the returns filed under Subsection (5) of Section 6 of the Act, after the issuance of pre-assessment notices.

21. Now we shall deal with the contention raised by the assessee relying on Section 25C of the Act, inserted by Subsection (10) of Section 10 of the Kerala Finance Act, 2014. Paragraph 385 of the Budget Speech 2014-15 of the Minister for Finance, Kerala, deals with the amendment proposed to the VAT Act in order to remove the difficulties in granting input tax credit and special rebate while assessments are initiated denying presumptive status of dealers. Paragraph 385 of the Budget Speech 2014-15 reads thus;

"385. Presumptive tax is a simplified provision made available to small dealers subject to certain conditions. If any of the conditions is violated, they will be assessed for payment of tax as a normal dealer and they have to pay tax accordingly. But while making such assessments, these dealers are finding it difficult for obtaining input tax credit and special rebate. Hence, provisions will be made in the VAT Act to remove the difficulties so as to grant input tax credit and special rebate while assessments are initiated denying their presumptive status."

22. Going by Clause (i) of Section 2 of the Kerala Finance Act, 2014, sub-section (10) of Section 10 of the said Act by which Section 25C was inserted to the VAT Act shall be deemed to have come into force on 1/4/2005. Section 25C of the Act, inserted by the Kerala Finance Act, 2014, reads thus;

"25C. Special provision regarding assessment of dealers paying presumptive tax:- Notwithstanding anything contained in sub-section (4) of section 11 or sub-section (2) of section 12, if any assessment or other proceeding is initiated by the assessing authority denying the eligibility of a dealer to pay presumptive tax for the violation of conditions enumerated in subsection (5) of section 6, such dealer shall be granted input tax credit or special rebate, as the case may be."

23. A reading of Paragraph 385 of the Budget Speech 2014-15 makes it abundantly clear that, presumptive tax is made available to small dealers subject to certain conditions and in case of violation of any of such conditions, such dealers will be assessed for payment of tax as a normal dealer and they have to pay tax accordingly. As the presumptive tax dealers find it difficult to obtain input tax credit and special rebate while assessments are initiated denying their presumptive status, the Government felt the need to amend the existing provisions in the Act, which was given effect by inserting Section 25C to the Act, with effect from 1/4/2005, by the Kerala Finance Act, 2014. Going by Section 25C of the Act, in any assessment or other proceeding initiated by the assessing authority denying the eligibility of a dealer to pay presumptive tax for the

violation of conditions enumerated in sub-section (5) of section 6, such dealer shall be granted input tax credit or special rebate, as the case may be. In our view, Section 25C of the Act will not in any manner absolve any dealer paying presumptive tax, against whom any assessment or other proceeding are initiated by the assessing authority denying the eligibility to pay presumptive tax for the violation of conditions enumerated in sub-section (5) of section 6, from being assessed for payment of tax as a normal dealer or from imposing any penalty under Sub-section (7) of Section 22 of the Act. It only enables such dealers to claim input tax credit on the turnover in excess of 60 lakh rupees, or to claim special rebate, as the case may be.

24. The appeals filed by the assessee before the Tribunal ended in dismissal by orders dated 28/2/2014. On receiving the assent of the Governor to the Kerala Finance Bill, 2014, the Kerala Finance Act, 2014, was published in the Kerala Gazette on 23/7/2014, and Section 25C to the Act came into force with effect from 1/4/2005. In such circumstances, we are of the considered view that, the entitlement of the assessee for input tax credit for the period in dispute, on the turnover in excess of 60 lakh rupees, requires to be considered by the assessing authority, in terms of Section 25C of the Act.

25. For the limited purpose of considering the entitlement of the assessee for input tax credit for the period in dispute, on the turnover in excess of 60 lakh rupees, the matters are remanded to the assessing authority, who shall pass appropriate orders, with notice to the assessee and after giving the assessee a reasonable opportunity to produce materials, if any, in support of its claim for input tax credit. The assessing authority shall pass orders as directed above, as expeditiously as possible, at any rate, within a period of 4 months from the date of receipt of a certified copy of this order. It is made clear that, in case the assessing authority upholds the claim of the assessee for input tax credit resulting reduction, if any, in the tax payable for the period in dispute, it would be open to the assessing authority to revise the penalty imposed on the assessee under Sub-section (7) of Section 22 of the Act for the period in dispute.

26. All other questions of law raised in these revisions are found against the assessee, thereby confirming the findings of the authorities below on those questions.

These O.T. Revisions are accordingly disposed of.

