
(1996) 10 KL CK 0023

In the High Court Of Kerala

Case No : T.R.C. No's. 295, 296 and 297 of 1994

Kodoor Engineering (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-10-1996

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 41, 41(1), 5(2A), 5A

Citation : (2003) 133 STC 250

Hon'ble Judges : V.V. Kamat, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : K. Sankaran and N. Muraleedharan Nair, for the Appellant; V.C. James, Government Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

V.V. kamat, J.—The assessee--M/s. Kodoor Engineers (P) Ltd.--has approached this Court in those three tax revision cases for the assessment years 1987-88, 1988-89 and 1989-90 respectively.

2. For the year 1987-88 he reported total and taxable turnover of Rs. 49,84,738.78 and Rs. 48,42,896.85 respectively. For the year 1988-89 it was Rs. 45,16,060.48 and Rs. 42,11,506.33 respectively. For the assessment year 1989-90, however, it was Rs. 57,48,588.52 and Rs. 53,98,687 respectively. In all these three proceedings the accounts were rejected and the taxable turnover was estimated. In the same order the estimated taxable turnover is Rs. 53,69,410, Rs. 44,57,010 and Rs. 56,92,220. It would further be seen that in all these three proceedings in the same manner the addition would be Rs. 5,26,514, Rs. 2,45,500 and Rs. 2,93,530 in the same order. The proceedings give the splitting up with regard to these additions with reference to two sources, viz., suppression of sales in manufactured polythene pipes and taxable turnover u/s 5A of the Act.

3. In all these proceedings the assessing authority determined percentages of

additions ; illustratively for the year 1987-88 it was 10 per cent for the years 1988-89 and 1989-90 it was 5 per cent and with regard to the taxable turnover u/s 5A of the Act, it is 60 per cent throughout all the sales turnover added back.

4. Further travel of the proceedings before the first appellate authority--the Deputy Commissioner (Appeals)--shows that the controversy centred around the question of refixing of the addition. For the assessment year 1987-88, 10 per cent was reduced to 5 per cent and for the other years 5 per cent was reduced to 3 per cent and 2.5 per cent respectively. In all the proceedings there was proportionate reduction with regard to the purchase turnover u/s 5A of the Act.

5. There was a further travel of the proceedings before the Kerala Sales Tax Appellate Tribunal. For the year 1987-88 the addition was not in percentage, but was in the nature of a fixed lump sum of Rs. 75,000. Similarly for the year 1988-89 it was in regard to a lump sum of Rs. 50,000. However, for the year 1989-90 there was no interference and the order of the first appellate authority received endorsement on both the counts.

6. The learned counsel has taken us through the three orders. It is to be stated that the Kerala Sales Tax Appellate Tribunal, Additional Bench, Ernakulam delivered a common order dated September 28, 1993. The learned counsel appearing for the assessee in all the three revision cases, in vain tried to urge that there are no standard specifications of raw materials required for the production of polythene pipes and in regard thereto the assessing authority practically rejected the books of accounts maintained by the assessee by referring to the approximate requirement furnished by none other than the assessee himself. The learned counsel strenuously urged that even consumption of raw materials would not form material enough to reject the books of accounts. We are afraid that acting under the powers u/s 41(1) of the Kerala General Sales Tax Act, 1963, it would not be possible to reopen everything especially in the context of facts and circumstances stated hereinabove. Even with regard to the fixation of the addition, the assessing officer has been more than considerate. The percentage of addition also affords satisfaction that the assessing authority has used judicial discretion in regard thereto. On the other aspect of fixation of addition in terms of percentage, it was really more than difficult for the learned counsel to urge justifiably in the context of limited powers u/s 41(1) of the Kerala General Sales Tax Act, 1963.

7. However, the learned counsel would have to be understood as more than justified in the context of levy of turnover tax, especially in regard to its levy with reference to the amount of tax collected. The learned counsel invited our attention to the following question No. 4 in the context :--

"Whether the Appellate Tribunal is justified in law in ordering to levy turnover tax on the amount of tax collected, especially in view of the judgment dated September 7, 1994 of this Hon"ble Court in T.R.C. No. 9 of 1994 in the case of Deputy Commissioner (Law) v. Canara Workshop Limited, Kozhikode, Reported

in [19941] 95 STC 507.

?".

The learned counsel brought to our notice the decision of this Court in Deputy Commissioner of Sales Tax (Law) v. Canara Workshop Limited [19741] 95 STC 507 clarifying the term "turnover" meaning the aggregate amount for which the goods are either bought or sold. This Court, referring to Section 5(2A) of the Act, has ruled that the language of the proviso u/s 5(2A) is very clear making a clear difference between tax which is leviable and tax which is payable, reaching to further logical conclusion that on such turnover which would necessarily include the sales tax collected on it, no turnover tax is payable. What is excluded is the entire turnover which is subjected to sales tax and not only a part of it which is taxable. The conclusion is that there can be no need at all for expressly excluding sales tax from the turnover for the purpose of turnover tax because by the very scheme of Section 5(2A) when sales tax forms part of turnover, that turnover cannot be subjected to turnover tax. The learned counsel further brought to our notice the decision of this Court (to which one of us--myself was a partner dictating the judgment) dated September 26, 1996 in T.R.C. No. 29 of 1994 taking the same view relying thereupon.

8. In this view of the situation the only modification that would be required would be in the nature of a clarification that the Tribunal is not considered justified in law in ordering levy of turnover tax on the amount of tax collected. To that extent the directions of the Tribunal in paragraphs 6, 7 and 8 of its order would get quashed and set aside.

For all the above reasons all the three revision cases succeed partly in the context of the direction to levy and recover turnover tax on the amount of the tax collected to be understood as having been quashed and set aside. Order accordingly.