
(2011) 06 KL CK 0147
In the High Court Of Kerala
Case No : O.T. Rev. No. 56 of 2010

Maggy Sunny

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-06-2011

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 67

Citation : (2012) 50 VST 527

Hon'ble Judges : C.N. Ramachandran Nair, J;Bhabani Prasad Ray, J

Bench : Division Bench

Advocate : C.K. Thanu Pillai, for the Appellant; Mohammed Rafiq, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner, a dealer in gold ornaments, has filed this revision petition challenging the orders of the VAT Appellate Tribunal confirming penalty levied u/s 67 of the Kerala Value Added Tax Act, 2003 (hereinafter called as "the Act", for short) for evasion of tax during the year 2005-06. We have heard learned counsel appearing for the petitioner and learned Government Pleader appearing for the respondent and have also gone through the impugned orders including the appellate order issued by the VAT Appellate Tribunal.

2. Even though tax payable under the Act on the sales turnover of gold jewellery is only one per cent, still having regard to the value of the item, the incidence of tax is very heavy and consequently tax evasion is said to be very common in gold business in the State. According to the learned Government Pleader, the usual practice of tax evasion by gold dealers is by making unaccounted sales by issuing slips for the sales instead of raising invoices and the same is known to the Intelligence Wing of the Department of Commercial Taxes. When they doubted unaccounted sales by the petitioner in this fashion, one of the departmental officers pretending to be a consumer made a sample purchase of a gold ornament from the petitioner's shop for Rs. 4,750. The petitioner made the

sale to the departmental officer without raising any invoice and accounting the transaction but by preparing and issuing a slip based on which payment was also made by the officer. After making the above purchase at 2.25 pm on February 24, 2006, the departmental officers conducted search in the petitioner's gold shop immediately thereafter. As apprehended by them, the departmental officers recovered slips covering suppressed sales turnover of above Rs. 16.22 crores as against the declared turnover up to the date of search, which was only around Rs. 37 lakhs. The intelligence officer after analysing the entries in the sales slips found that the entire transactions stated therein represent unaccounted sales made during the year up to the date of search. Besides seizure of slips proving unaccounted sales, the Department also noticed that the accounts maintained are not credible on account of stock variation and other defects. After a detailed enquiry and after issuing show-cause notice and after hearing the petitioner's objections, the intelligence officer levied penalty at double the amount of tax evaded by the petitioner. In the first appeal filed by the petitioner, the appellate authority substantially confirmed the findings of the intelligence officer with regard to evasion and liability for penalty but ordered some modification. In the second appeal filed by the petitioner, the Tribunal confirmed the order of the appellate authority against which the petitioner has come up with this revision before us.

3. The first ground raised by the learned counsel for the petitioner against the order of the Tribunal is that the Tribunal went wrong in placing burden of proof on the petitioner that the slips recovered do not represent unaccounted purchase or sales. The learned Government Pleader, on the other hand, referred to the decision of this court relied on by the Tribunal in their order and contended that since the slips are recovered from the business premises of the dealer, it is for the dealer to explain the nature of entries therein and in the absence of such explanation and proof furnished by the petitioner that entries in the slips represent some other transactions, the officer was justified in assuming that the entries are of unaccounted sales. We notice that the Tribunal has relied on the decisions of this court, particularly in *M.A. Unnerikutty v. State of Kerala* reported in [1979] 44 STC 94 (Ker), in support of their finding that the dealer is responsible to establish the nature of entries in the slips seized from the shop room. What we notice in this case is that the Department has not made any presumption that the entries in the entire slips seized represent unaccounted sales made by the petitioner without materials. On the other hand, this is a case where the Department made a sample purchase immediately before search to find out the trade practice of the petitioner and the Department successfully trapped the petitioner because in the records seized the slip representing unaccounted sale made to the departmental officer who made the sample purchase immediately before search was also found. Therefore unlike in other cases of recovery of business slips or other papers containing entries not recorded in regular books of accounts, in this case the Department has by making a sample purchase established business practice of unaccounted sales by

the petitioner by issuing slips. When trade practice of sales through slips is established, it was for the petitioner to prove that all such sales are entered in the regular books which admittedly was not done because sales made by raising invoices only were accounted in books. We therefore do not find any justification to interfere with the order of the Tribunal casting burden of proof on the petitioner to establish that the entries in the seized slips are accounted in books of accounts because through the sample purchase the Department established the pattern of unaccounted sales made by the petitioner through slips. In the absence of proof of accounting these transactions in the regular books, the Tribunal rightly held that the entries in the seized slips represent unaccounted sales. We, therefore, reject the contention of the petitioner that the burden of establishing entries in seized slips as representing unaccounted sales is on the Department.

4. So far as the estimation of turnover of unaccounted sales from the seized slips, based on which tax evasion and penalty was determined, the petitioner's counsel raised various contentions which were raised before the Tribunal but rejected by them. We notice that the Tribunal has considered in detail the nature of objections and the petitioner's challenge against the intelligence officer's reliance on the seized business slips. Even though it is neither possible nor required of us to refer the entries in each and every slip to consider the correctness of the Tribunal's order, we have still considered the explanation offered by the petitioner pertaining to slip No. 101 which represents transaction for Rs. 10,12,507. According to the petitioner, the transaction covered by the slip represents loan taken from a limited company by name M/s. Muthoot Fincorp Ltd. In order to verify the genuineness of the claim made by the petitioner, the Tribunal called for the balance sheet and audited accounts of the petitioner. In the audited accounts of the petitioner, though it was prepared after the search, the transaction is not shown as loan taken from the company, namely, M/s. Muthoot Fincorp Ltd. In short, the claim of the appellant therefore stands disapproved by their own profit and loss account and balance sheet. It was also noticed that M/s. Muthoot Fincorp Ltd., is also incidentally engaged in gold sales. We therefore do not find any merit in the challenge against the addition of Rs. 10,12,507 treating it as unaccounted sales.

5. As already stated, we do not propose to consider the transactions covered by all slips, which were taken as unaccounted sales because the Tribunal has considered entries in large number of slips and found no substance in the petitioner's challenge against the same. Consequently, we do not find any justification to interfere with the order of the Tribunal sustaining penalty. The last contention raised by the learned counsel for the petitioner is with regard to the quantum of penalty which is the maximum, i.e., double the amount of tax sought to be evaded. We asked a specific question to the learned counsel for the petitioner as to whether after detection and levy of penalty at least the petitioner has conceded suppressed turnover in the returns filed and offered the same for assessment. The learned counsel contended that assessment is being separately

contested and the petitioner had not conceded any suppression. In view of the contest made by the petitioner in assessment we do not think there is any scope for reduction of penalty which could have been considered, if the petitioner offered suppressed turnover for assessment and remitted the tax without contest. Consequently, there is no scope for reduction of penalty.

We, therefore, dismiss the O. T. revision case.