

(2016) 06 KL CK 0043
In the High Court Of Kerala
Case No : W.P. (C) . No. 4486 of 2015

Maya Rajeev

APPELLANT

Vs

The Commercial Tax Officer

RESPONDENT

Date of Decision : 23-06-2016

Acts Referred:

Kerala Value Added Tax Act, 2003 - Section 12(1)

Citation : (2016) 3 KHC 754 : (2016) 3 KLT 180

Hon'ble Judges : A.M. Shaffique, J.

Bench : Single Bench

Advocate : Sri. V. Devananda Narasimham, Advocate, for the Appellant; Sri. Bobby John, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

A.M. Shaffique, J.—In this writ petition, the petitioner being a registered dealer under the KVAT Act, 2003 ("the Act" for short) on the rolls of the 1st respondent challenges Exts.P5 and P6 assessment orders for the year 2011-12 and 2012-13.

2. The challenge is only with reference to the limited extent of claiming special rebate in terms of Section 12(1) of the Act. In the year 2011-12 the purchase turnover of the petitioner under Section 6(2) was Rs. 11,50,358/- and the tax on the said amount would come to Rs. 1,43,795/-. In respect the assessment year 2012-13 the purchase turnover is Rs. 18,67,305.16/- and the tax due computed at 13.5% is Rs. 2,52,086.18/-. The total output tax payable by the petitioner during the relevant years was more than the special rebate claimed for the purchase turnover as per Section 6(2). However, while making the assessment, the assessing officer had only given a special rebate at 4% of the purchase turnover for the year 2011-12 and 5% for the year 2012-13. This according to the petitioner is on a wrong interpretation of the fourth proviso to Section 12(1) of the Act. The petitioner, therefore, challenges the vires of the statute viz., fourth proviso to Section 12(1) and alternatively contending that the method

adopted by the assessing officer in giving rebate is absolutely wrong.

Section 12(1)(a) and (b) reads as under :

12. Special rebating in certain cases. - (1) In calculating the net tax payable by a dealer for a return period, there shall be deducted from the tax payable for the return period, a sum equal to,-

(a) the tax paid under sub-section (2) of section 6; and

(b) the tax paid under section 3 of the Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994) on the import of any goods, other than those included in the fourth schedule;

The purpose of Section 12, when applied to the facts of the case, is to give a rebate on tax paid under Section 6(2) of the KVAT Act. The provisos apparently provides for certain limitations to the extent of rebate that could be grant in respect of such a dealer. The provisos read as under :

"Provided that where the special rebate is in respect of capital goods, the same shall be allowed over a period of three years and all the conditions and restrictions applicable to input tax credit under sub-section (2) of section 11 shall apply to the special rebate under this section also:

Provided also that where the goods except plywood, packing cases, splints and veneers in respect of which tax is payable under sub-section (2) of section 6 is sold in the State or in the course of interstate trade or used in the course of manufacture of taxable goods in the month in which it is purchased, the special rebate allowable in respect of such goods resold or sold in the course of interstate trade or used in the manufacture of goods liable to pay tax under this Act or Central Sales Tax Act, 1956 may be availed in the month itself:

Provided also that where the goods in respect of which tax under subsection (2) of section 6 or under section 3 of the Kerala Tax on Entry Goods into Local Areas Act, 1994 has been paid, are sent outside the State or used in the manufacture of goods and the same are sent outside the State, otherwise than by way of sale in the course of interstate trade or export or where the sale in the course of interstate trade is exempted from tax, the special rebate under this section shall be limited to the amount of such tax paid in excess of four per cent.

Provided also that where the goods in respect of which tax under subsection (2) of section 6 or under section 3 of the Kerala Tax on Entry of Goods in to Local Areas Act, 1994 has been paid and where such goods are resold in the State at reduced rate or a part of which has been resold and the balance disposed in the state otherwise than by way of sale or used in the manufacture of taxable goods, then the special rebate under this section shall not exceed the output tax payable in respect of such goods or goods manufactured out of such goods."

Therefore, the proviso can only be treated as an exemption to the general rule. In a taxing statute, it is always possible for the legislature to bring in such

provisions to either grant the benefit or to restrict the benefit in certain situations and therefore, it cannot be stated that the statute is unconstitutional or irrational in any manner. As far as the challenge to the fourth proviso to Section 12 (1) of the Act is concerned, sufficient pleadings are not available in the writ petition to indicate that the challenge can be sustained. Challenge to the 4th proviso to Section 12(1) is, therefore, negatived.

3. The alternate contention raised is based on the interpretation given by the assessing officer to the fourth proviso.

4. In the case on hand, the petitioner had purchased goods which are taxable under Section 6(2) of the Act and had used the goods in the manufacture of taxable goods. The output tax payable by the petitioner is admittedly above the rebate that has been claimed by the petitioner. The question is regarding the interpretation of the words "then the special rebate under this section shall not exceed the output tax payable in respect of such goods or goods manufactured out of such goods." The officer had opined that since the rate of tax for output tax payable is 4% and 5% in the respective years of assessment, the rebate has to be limited to 4% and 5% during the aforesaid assessment years. The learned counsel for petitioner argues that the proviso contemplates special rebate up to the total output tax payable.

5. The learned Government Pleader, while supporting the stand taken by the assessing authority, referred to the entire statutory provision under Section 12 and submitted that the scheme of the Act provides for certain benefit to be given in the form of rebate and fourth proviso clearly indicates that the extent of rebate to be grant to certain category of dealers. When it is stated that the special rebate shall not exceed the output tax payable, it has to be with reference to the rate of tax and not with reference to the total amount of rebate allowable to a dealer.

6. But on a perusal of the statutory provision, I do not think that such a view is possible. As rightly contended by the learned counsel for the petitioner, when Section 12(1) gives a benefit and the benefit is restricted by way of a proviso, the proviso has to be read as it is without any addition or deletion. Each word in the proviso has to be given a meaning and while giving such an interpretation, the only possible view that could be taken is with reference to the amount of special rebate that the dealer claims with reference to the output tax payable and not with reference to the rate of tax.

7. It is a well settled principle of statutory interpretation that, when there is no ambiguity in the provision, the same does not call for any further interpretation. If we look at the third proviso which takes into consideration certain other situations where the rebate is payable, there is specific mention about rate of tax. If the legislature intended to restrict the rebate on the basis of the rate of tax, there was no reason why such a specific provision should not have been incorporated in the statute. Therefore, it can only be assumed that the

legislature intended that "the special rebate under this section" means "the rebate in terms of Section 12(1)(a)". The words "shall not exceed output tax payable" means that "the output tax payable by the dealer". Further the words "goods manufactured out of such goods" means "the goods manufactured using the goods purchased by paying tax under Section 6(2)". This provision only means that the rebate shall not exceed the output tax payable for the goods manufactured by using the goods purchased in terms of Section 6(2) of the Act. Therefore, I am of the view that the assessing authorities were not justified in limiting the rebate to 4% and 5% as the case may be. The petitioner was entitled for rebate for the entire amount paid in terms of Section 12(1) and even going by the fourth proviso, since the output tax payable does not exceed the total claim for rebate under Section 6(2).

8. In the result, this writ petition is allowed. Exts.P5 and P6 are set aside. The assessing authority is directed to issue fresh assessment orders taking into consideration the aforesaid interpretation given to the fourth proviso to Section 12(1) and pass fresh orders within a period of two months from the date of receipt of a copy this judgment.