
(2016) 12 KL CK 0073

In the High Court Of Kerala

Case No : O.T. Rev. Nos. 178, 179 and 180 of 2016

M/s. Beepath Castings Pvt. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 24

Citation : (2017) 2 ILRKerala 16 : (2017) 1 KLT 598

Hon'ble Judges : Mr. Thottathil B. Radhakrishnan and Mr. Devan Ramachandran, JJ.

Bench : Division Bench

Advocate : Sri. Harisankar V. Menon and Smt. Meera V. Menon, Advocates, for the Petitioner; Sri. Mohammed Rafiq, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Devan Ramachandran, J.—Ingenuity knows no bounds and nowhere is it more manifest than in attempts to evade taxes. The methods used are sometimes so inventive, cunning and astute that one would have no other option but to be amused at the sheer guile of the evader.

2. The revision petitions that were are now dealing with disclose a technique of evasion of tax that is at once simple and non-intricate but crafty and canny all the same. Such evasion being detected, defences are also sought to be attired in legal habiliments which is, however, undeserving.

3. Now to the essential facts: These revisions have been filed by the petitioner impugning the order of the Kerala Value Added Tax Additional Appellate Tribunal ("the Tribunal" for brevity) relating to the returns for the months of August 2007, September, 2007 and October, 2007 respectively.

4. Since all the revisions relate to the same sets of facts and the questions of law raised are similar, they are being heard and disposed of together by this judgment.

5. The constitutive facts as are necessary for resolution of the issues raised in these revisions are that on 08.11.2007 the Intelligence Officer, Squad No.VI, Commercial Taxes, Palakkad, while checking the vehicles, came across a delivery note, the genuineness of which was suspected. Subsequent verification revealed that the assessee was indulging in sales suppression by adopting a particular modus operandi. The method was that the assessee would write a original delivery note using an ink-less pen or such other instrument so as to get an impression of the writing in the carbon copy of the delivery note showing the actual quantity and value of the goods transported. However, once the assignment reaches the destination, a lesser quantity and value is written in the original and the carbon impression is obtained in triplicate of the delivery note, after which the original carbon impression is discarded.

6. The Intelligence Wing, on its verification, assessed the suppression to be Rs.1,00,33,433/- with a tax effect of Rs.4,01,337/-. The assessee did not contest this and admitted the offence of not maintaining true and correct books of accounts and compounded it by paying the compounding fee and the tax assessed. In the audit assessment the Assessing Authority found that the suppression of the turnover for the month of August 2007 and such suppressions were also seen for the month of September 2007. It was also noticed that the assessee had surrendered a delivery note, which, after verification, was found to have been used for transportation. As for the month of October 2007, tampering of delivery notes and cancellation of huge delivery notes were noticed, while for the month of November 2007, again tampering of delivery notes was noticed. The Assessing Authority, therefore, apart from adding the actual suppression to the turnover, made two times additions of suppression turnover in all cases to cover the probable omissions and made an addition of 80% for related purchase turnover suppressions under Section 6(2) of the Kerala Value Added Tax Act ("the Act" for brevity). Thereafter, there was some orders for rectification with respect to the months October and November, which, however, did not change the nature of tax or additions made by the Assessing Authority.

7. Aggrieved by the assessment, the assessee had filed appeals before the First Appellate Authority, which were partly allowed reducing the addition for probable omissions and suppressions to the equal amount of actuals. These suspended additions were thereafter challenged by the assessee before the Tribunal. The Tribunal, after an elaborate consideration of all the facts, allowed the appeals in part only to the extent of modifying the assessment orders by deleting the suspected suppression to cover the probable omissions and suppressions in all cases.

8. The assessee has filed these revisions raising the following substantial questions of law:

"A. Whether on the facts and in the circumstances of the case, has not the appellate tribunal erred in sustaining the alleged suppression against the revision petitioner?

B. Ought not the Tribunal have held that the additions to the turnover are made purely on surmises or guess work without any positive evidence as regards suppression?

C. Ought not the Tribunal have directed the assessing authority to grant the revision petitioner an opportunity to verify the alleged variations in the presence of the assessing authority or ventured to do such verification on its own, being the highest fact finding authority under the statute?

9. We have examined the questions raised by the assessee as also the orders of the Tribunal and that of the other authorities in hierarchy.

10. The Tribunal has considered each of the contentions raised by the assessee and has found that the assessee had, in fact, conceded to the suppressions and that, therefore, the assessments were completed based on the suppressions identified by the Intelligence Wing, which was also admitted by the assessee. The Tribunal noted specifically that the assessee had admitted the offence of not maintaining true and correct books of accounts and had paid the compounding fee along with the tax due. The Tribunal concluded correctly that even the assessee does not have a case that such admission was made by them under threat or coercion. This is a case where substantial portion of the suppressed turnover was assessed with reference to specific documentary evidence. We have seen that it is admitted by the assessee that the original delivery notes were written with an ink-less pen or such other instrument thus obtaining a carbon impression of the same and after such consignment is delivered, the original notes are filled by writings in ink showing lesser value of the commodity consignment. The carbon impression of this writing is then obtained on the triplicate copy. Since these are all admitted by the assessee while making his application to compound the offence, we are certainly of the view that the Tribunal and the statutory authorities have acted within the parameters available to them under the Statute and that the orders relating to suppression and addition of the actuals are completely legal and imposed under the powers available to them under the Act. We, therefore, have no hesitation in holding that the impugned orders of the Tribunal and that of the statutory authorities do not suffer from any error in jurisdiction or mistake so as to entitle a re-examination at the hands of this Court. Since the suppression was suspected against the petitioner and the additions were made based on the documents and admissions of the assessee, we hold that the Tribunal and the authorities below have acted fairly and that the impugned orders are legally correct and sustainable.

11. At the time when the revisions were heard, the learned counsel for the petitioner prayed with vigor that the third question of law, namely, that the Tribunal ought to have allowed the petitioner an opportunity to verify the variance in the presence of the Assessing Authority or that it ought to have done so on its own being the highest fact finding authority. We see that the Tribunal has considered this issue and has answered it in paragraph 13 of the impugned order. We extract the same for ease of reference, which is as under:

"Appellant has also contended that there was denial of natural justice as he was not given an opportunity to verify the working as to how suppression was arrived at. The manner in which turnover was suppressed is repeatedly explained in all the assessment orders preceded by proposals on the same lines. All the delivery notes which were tampered with are mentioned with number and date in each of the orders. We do not think that there was any violation of natural justice with regard to lack of explanation regarding the manner in which suppression was worked out by the Assessing Authority. As rightly pointed out by the learned Law Officer, there was no attempt by the appellant to cause production of duplicate copies of delivery notes issued to its purchasing dealers for which there is no explanation. Lack of interest is obviously for the reason that the duplicate copy of delivery note will not be retained by the purchasing dealer as he would be also, in all probabilities, a conniving party to the suppressions practised. That apart, there is admission by the appellant with regard to the suppressions practised, which for the reasons discussed above, appears to be voluntarily made. Hence we do not think that there was any denial of natural justice to the appellant as contended by it. When appellant hesitates to produce/submit material evidence to prove that there were no suppressions as found by the Assessing Authority, we do not think that perusal of assessment records as such would better the case of the appellant."

12. It is obvious that the Tribunal rejected the contentions of the assessee for extremely valid reasons. The Statute does not provide that the assessee be given an opportunity to verify the variance in the presence of the Assessing Authority. It only makes it imperative on the Assessing Authority to issue notice to the assessee before the assessment proceedings are concluded. Section 24(1) (c) of the Act, which provides for audit assessment, only provides that no assessment shall be made under that Section without affording the dealer an opportunity of being heard. For ease of reference the Section along with its relevant proviso is extracted:

24. Audit assessment.- (1) Notwithstanding anything contained in any other provision of this Act, if any dealer,-

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(c) fails to prove the claim of input tax credit [special rebate or refund claimed, the audit officer may, any time within [three years] from the last date of the year to which the return relates,] after conducting such enquiry as he may deem necessary, reject the returns of such return periods and complete the assessments to the best of judgment:

Provided that no assessment under this section shall be completed without affording the dealer an opportunity of being heard:"

13. It is ex facie perspicuous that this Section does not, in any manner, provide

that verification with respect to the alleged suppression can be done only in the presence of the assessee or after affording them an opportunity to verify the same. On the contrary, as has been correctly noticed by the Tribunal, the burden is completely cast upon the assessee to establish its case by placing before the Assessing Authority all the documents and materials that they intend to rely on in defence. It is open to the assessee under the provisions of the Act to establish that no suppression has been committed by them and if they are unable to do so, it would then be within the province of the Assessing Authority under Section 24 of the Act to reject the returns and complete the assessment to the best of his judgment. This power of the Assessing Authority cannot be fettered or shackled in any manner by super-imposing a limitation that the suppressions will have to be established or quantified only in the presence of the assessee or that it can only be after giving the assessee an opportunity to verify the basis of such quantification made and ordered by the Assessing Authority. This would be doing violence to the letter of the statute and providing the assessee a privilege which would not be forensically justified. Once the burden of the mandate of the section to afford a notice to the assessee is discharged, it would then be up to the assessee to prove its case with sufficient material and the Assessing Officer would be under no constraints other than those specifically provided under the statute to complete the assessment under the best of his judgment.

14. In this particular case, since it is virtually admitted by the assessee that they had committed suppression and had also compounded the offence, it was then completely within the jurisdictional domain of the Assessing Authority to complete the assessment applying the principles of best judgment based on verification of the documents available and quantification of the same in a manner that is available to them under law.

15. We, therefore, have no hesitation in holding that the Assessing Authority or the Tribunal was not required under law to grant the petitioner any opportunity to verify the alleged variations in the presence of the Assessing Authority nor was it bound upon the Tribunal to make such verification its own as has now been required by the assessee.

16. In such circumstances, we dismiss these revisions upholding the impugned orders. There will be no order as to costs.