(2023) 06 KL CK 0186

In the High Court Of Kerala

Case No : Other Tax Revision (Vat) No.130 Of 2017

M/s Chungath Gold — APPELLANT

Vs

State Of Kerala — RESPONDENT

Date of Decision : 15-06-2023

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 6, 8(f), 8(f)(iv)

Citation : (2023) 06 KL CK 0186

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P, J

Bench : Division Bench

Advocate : Harisankar V. Menon, Meera V.Menon, M.M.Jasmine

Final Decision : Allowed

Judgement

A.K.Jayasankaran Nambiar, J

1. In this O.T.Revision, the petitioner impugns the order dated 30.5.2017 of the Kerala Value Added Tax Appellate Tribunal, Ernakulam in T.A.(VAT).No.52/2016. The brief facts necessary for disposal of this revision are as follows:

The petitioner is a partnership firm engaged in the jewellery trade. It is an assessee under the Kerala Value Added Tax Act [hereinafter referred to as the "KVAT Act"] on the rolls of the Commercial Tax Officer, Angamaly. It had commenced business activities at Angamaly during March, 2014, and the registration certificate issued to it by the Commercial Tax Department showed its registered address as Door No.XX/322A. Till the year 2014-15, the petitioner paid tax on regular basis under Section 6 of the KVAT Act.

2. In February, 2015, the petitioner identified a most spacious and modern building with three floors and moved the business to the said building. The said building had three door numbers, namely Door Nos.XX/438/10, XX/438/19 and XX/438/24. The petitioner also entered into a lease deed with the owner of the building on 25.2.2015. The necessary licence for carrying on the business was also obtained from the Angamaly Municipality [Annexure-C]. A request was also

made to the Assessing Authority under the KVAT Act to amend the registration certificate to the new business address. The necessary changes in the registration certificate were then effected by the Assessing Authority, as is evidenced by Annexure-E document dated 11.3.2015. Statutory returns for the period from February, 2015 onwards were also filed by the petitioner which showed the new premises as the principal place of business.

3. During the year 2015-16, the petitioner chose to pay tax on compounding basis under Section 8(f) of the KVAT Act, and towards that end, applied for and obtained the necessary permission from the Assessing Authority on 21.5.2015 [Annexure-H]. The returns for the months in which trade was conducted were also filed and tax paid on compounded basis thereunder.

4. By Annexure-J notice, the petitioner was asked to show cause as to why the permission granted to it for payment of tax on compounded basis should not be cancelled since, according to the Assessing Authority, the petitioner had shifted its business to new premises with effect from 17.8.2015. The said date coincides with the date on which the showroom of the petitioner was formally inaugurated after renovation/refurbishment works. While the petitioner preferred a reply to the notice, the Assessing Authority, after hearing the petitioner, proceeded to cancel the permission granted to pay tax on compounded basis for the said year [Annexure-L]. The petitioner therefore preferred an appeal before the Appellate Tribunal, which did not meet with any success, for the same came to be dismissed by Annexure-M order, which is impugned in this O.T. Revision.

5. We have heard Sri.Harisankar V. Menon, the learned counsel appearing on behalf of the revision petitioner and also Smt.Jasmine M.M., the learned Government Pleader appearing on behalf of the respondent.

6. Sri.Harisankar V. Menon points out that the sole reason cited by the Assessing Authority as well as by the Tribunal to justify the cancellation of the permission to pay tax on compounded basis for the year 2015-16 was the alleged shifting of business premises during the year. He points out that while there is no statutory bar for a person opting to pay tax on compounded basis to shift his business premises during the year, the only requirement in law is that such shifting, if any, should be done with due intimation to the Department. It is his specific contention that in the instant case, the shifting of business premises took place in February, 2015 itself, and that fact was intimated to the Assessing Officer who proceeded to amend the registration certificate of the petitioner to incorporate the new business address as early as in March, 2015. He contends therefore that merely because the formal inauguration of the renovated/refurbished premises was held in August, 2015, it did not follow that no business was conducted in the premises till then. He also points out that even in the Section 6 assessment order that was passed by the Assessing Officer for the year 2015-16, pursuant to the cancellation of the permission to pay tax on compounded basis, the Assessing Officer relies upon the turnover for the months from April to August, 2015, and attributes the said turnover to sales effected from the new business premises

that was formally inaugurated after renovation only in August, 2015. According to the learned counsel, the admission by the Assessing Officer in the assessment order passed under Section 6 of the KVAT Act, for the year 2015-16, belies the stand of the Department that the shifting of business premises was done only in August, 2015. It is also pointed out that at any rate, there was no allegation of any suppression of turnover by the petitioner at any stage of the proceedings.

7. Per contra, Smt.Jasmine, the learned Government Pleader would support the findings of the Assessing Officer as also the Appellate Tribunal, and argued that in view of the specific provision in sub clause (iv) of Section 8(f), the Assessing Authority was well within its powers, take note of the shifting of business premises and consequently cancelled the permission that was granted to the petitioner to pay tax on compounded basis, which permission was obtained when the petitioner was carrying on business in the erstwhile premises.

8. We have carefully considered the submissions of the learned counsel on either side and have gone through the pleadings on record. On a consideration of the same, we find that the statutory provision that enables an assessee to pay tax on compounded basis [Section 8(f) of the KVAT Act] does not mandate that the assessee should not change its place of business during the year in which it has sought to pay tax on compounded basis. The provision of sub clause (iv) of Section 8(f) only empowers an Assessing Authority to cancel a permission already granted for valid and sufficient reasons such as shifting of place of business, furnishing of false information, suppression of relevant information, failure to furnish such information demanded etc. It can be seen therefore that sub clause (iv) of Section 8(f) uses the phrase 'shifting of place of business' along with other phrases such as 'furnishing of false information', 'suppression of relevant information' etc. to denote those reasons which are treated as valid and sufficient by the Statute for the purposes of cancellation of a permission already granted. It is a settled principle of interpretation of statutes that the true scope and ambit of a phrase used in a statute must be gathered from the other words/ phrases which are used along with it in the statutory provision. The principle of noscitur a sociis is a rule of interpretation that stipulates that where the general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. The Latin term, noscitur a sociis contemplates that a statutory term is recognised by its associate words. The word “sociis” means “society”. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation as their colour and contents are to be derived from the context. [See the judgment of the Honourable Supreme Court in Maharashtra University of Health Sciences and Others v. Satchikitsa Prasarak Mandal and Others – [(2010) 3 SCC 786]]. On applying the principle of noscitur a sociis, to determine the scope and ambit of sub clause (iv) of Section 8(f), we can safely state that the shifting of a place of business can be cited as a valid and sufficient reason for cancelling a permission already granted only if such shifting is without the knowledge of the Assessing Officer and thereby had

an element of suppression of relevant information or failure to furnish relevant information. This would be the meaningful way of reading the phrase “shifting of place of business” in sub clause (iv) of Section 8(f). We are therefore of the view that on the facts of the instant case, inasmuch as the shifting of the business premises was with the knowledge of the Assessing Authority as evidenced by the fact that the Assessing Authority itself had amended the registration certificate issued to the petitioner by incorporating therein the new business address as early as in March, 2015, presumably pursuant to an inspection of the new premises as mandated by the statute, the mere shifting of business place simpliciter and with the knowledge of the Assessing Officer will not attract the penal provisions under the KVAT Act.

9. It is also significant that neither the Assessing Authority nor the Tribunal found that there was any suppression of turnover on the part of the petitioner or any deliberate furnishing of false information to the Department. In the absence of any of those factors, it was incumbent upon the Assessing Authority/Tribunal to demonstrate how the mere shifting of business place of the assessee, even assuming it was done during the middle of the assessment year, justified the cancellation of a permission already granted. As we have already held in Prodair Air Products India Private Limited v. State of Kerala – [2023 (3) KHC 1 (DB)], administrative decision making by tax authorities should also conform to the culture of justification which requires the decision of the tax authority to demonstrate responsiveness, justification and demonstrated expertise. Responsiveness refers to the requirement that the reasons given by the decision maker must respond to the central issues and concerns raised by the parties by 'listening' rather than merely 'hearing' parties. Justification refers to the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. Demonstrated expertise refers to the requirement of the decision maker establishing the reasonableness of his decision by demonstrating therein his experience and expertise. On the facts in the instant case, we do not find the Assessing Authority or the Tribunal to have indicated or provided a clear justification for the action of the Assessing Authority in cancelling the permission that was granted to the petitioner to pay tax on compounded basis for the assessment year 2015-16. We are of the view that the cancellation of the permission already granted was illegal and unreasonable, and hence, liable to be set aside. Accordingly, we allow this O.T. Revision by setting aside the impugned order of the Tribunal, into which the order of the Assessing Authority had merged, and answering the questions of law raised in this Revision Petition in favour of the assessee and against the Revenue.

The O.T. Revision is allowed.

