(2017) 06 KL CK 0033

In the High Court Of Kerala

Case No : 24612 of 2015 (B)

M/S. VENAD DESIGNERS AND CONTRACTORS (P) LTD., Vs THE INTELLIGENCE OFFICER, SQUAD NO II,? COMMERCIAL TAXES

Date of Decision : 28-06-2017

Acts Referred:

Kerala Value Added Tax Act, 2003, Section 6(1), Section 6(1)

Citation : (2017) 06 KL CK 0033

Hon'ble Judges : A.K.Jayasankaran Nambiar

Bench : SINGLE BENCH

Advocate : S.SURESH BABU, AJI V.DEV, V.K. SHAMSUDHEEN

Final Decision : Dismissed

Judgement

1. The petitioner has approached this Court aggrieved by Ext.P9 proceedings, issued under the Kerala Value Added Tax Act. By the said order, the petitioner was allowed to compound an offence on payment of Rs.8,00,000/- by way of compounding fee, and a tax amount quantified at Rs. 8,36,070/-. In the writ petition, it is the case of the petitioner that, while he had chosen to compound the offence, of suppression of details regarding the works for which he had opted for compounding, the respondents erred in adopting the rate of tax of 14.5%, in respect of those works that were not declared in the compounding application, while passing the impugned order. According to the petitioner, once he had chosen to pay tax on compounded basis, in respect of all works that he had undertaken for the year, even without making a declaration with

regard to the said works, the rate of tax adopted could not have been more than 3% for the year in question.

The learned Government Pleader would rely on the decision of the Division Bench of this Court in Silver Line Villas & Apartments Pvt. Ltd. v. State of Kerala [2017(2)KLT 770] to contend that, once the assessee makes an application for permission to pay tax at compounded rates for a particular works contract, and permission is granted with respect to that particular contract, it would only mean that all the individual components of such works contract would be included in such permission, and that it would not be then incumbent upon the assessee to make separate applications with respect to individual components of such works contract. The decision is relied upon to contend that, inasmuch as in the instant case, the assessee had not declared the various contracts for which he was opting to pay tax on compounded basis, he could not obtain the benefit of compounding, in respect of those works which he had not declared before the department.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, it is not in dispute that the petitioner had compounded the offence of suppression that was detected against him. Through the act of compounding the offence, the petitioner had virtually admitted that he had suppressed details of the contracts that he had undertaken during the assessment year in question. In the declaration, that was filed before the Tax Authorities for the purposes of exercising the option to pay the tax on compounded basis, the petitioner did not give details of all the works that he undertook during the year in question, so as to enable the respondents to determine the total

value of the works in respect of which he was opting to pay tax on compounded basis. The additional works, which were carried out by the petitioner, over and in relation to works that he had actually declared before the authorities, came to the knowledge of the department, only through an investigation carried out by them. Under the said circumstances, I am of the view that, in respect of the said additional works, which were not declared by the petitioner, the liability to tax would have to be discharged in accordance with the normal provisions under Section 6(1) of the KVAT Act. The benefit of compounding can only be given in respect of the works that were opted for by the petitioner. I, therefore, find no reason to interfere with Ext.P9 order passed by the respondents in the instant case. The writ petition in its challenge against Ext.P9 order, therefore fails, and is accordingly, dismissed.