
(2014) 09 KL CK 0167
In the High Court Of Kerala
Case No : WP(C). No. 11586 of 2009(P)

Sharon Insul India Ltd.

APPELLANT

Vs

Assistant Commissioner (Assessment)

RESPONDENT

Date of Decision : 20-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0167

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : K.B. Muhamed Kutty, Sr. Advocate and K.M. Firoz, Advocate for the Appellant; Lilly. K.T., Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner, who is a registered dealer and an assessee on the files of the 1st respondent, under the Kerala Value Added Tax Act, hereinafter referred to as the "KVAT Act", is engaged in the business of glass fibre and glass wool. During the assessment year 2005-06, he had filed returns and paid tax on the said item at the rate of 4%, going by the inclusion of the item "glass wool" under entry 31(11) of the third Schedule to the KVAT Act. It would appear that, by virtue of the Kerala Value Added Tax (Amendment) Act, 2005, which was published in the Gazette on 28.8.2005, the third Schedule was amended and various entries therein substituted with new entries. In that process, the item dealt with by the petitioner was deleted from the entries in the third Schedule and came to be classified under the residual head attracting tax at the rate of 12.5%. In the assessment that was completed against the petitioner for the said assessment year, by Ext. P2 assessment order, the rate of tax on glass wool was assessed at 12.5% even for the period from 1.4.2005 to 28.8.2005, the latter being the date on which the amendment Act came into force. The Assessing Authority proceeded on the assumption that the amendments brought about by the Amendment Act of 2005 were retrospective in nature and would take effect from 1.4.2005 and not from 28.8.2005. It is apparent that the Assessing Authority did not notice Section 24 of the

Amendment Act of 2005, which reads thus under:

"24. Validation:-Notwithstanding anything contained in any other provisions of this Act, or any judgment, decree or order of any Court or Tribunal, where the rate of tax in respect of any goods has been enhanced as a result of the amendments made under the Kerala Value Added Tax (Amendment) Act, 2005, such enhanced rate of tax shall be applicable from the date of such amendment and where such rate has been reduced, it shall be deemed to have come into force on the first day of April, 2005 provided that where any dealer had collected the tax at a higher rate, such collection shall be deemed to have been validly made and the tax so collected shall be paid over to Government."

2. It was under these circumstances, and on the erroneous assumption that the amendment was retrospective with effect from 1.4.2005 that the Assessing Authority completed the assessment in Ext. P2 order.

3. Aggrieved by Ext. P2 assessment order, the petitioner carried the matter in appeal before the 2nd respondent, who, vide Ext. P4 order, confirmed the demand against the petitioner on this issue. It is relevant to note that even while the petitioner had preferred an appeal before the First Appellate Authority, the petitioner approached this Court through the present writ petition aggrieved by the stand taken by the respondents in demanding amounts that were not legally due from him since, according to the petitioner, the Amendment Act of 2005 did not contemplate a retrospective enhancement of the rate of tax applicable to the commodity dealt with by the petitioner. It was during the pendency of the writ petition that the 2nd respondent Appellate Authority proceeded to pass Ext. P4 order. This led the petitioner to incorporate a challenge against the said appellate order also in the present writ petition. The writ petition essentially impugns both Exts. P2 and P4 orders to the extent they confirm a demand against the petitioner based on the adoption of a higher rate of tax for the commodity "glass wool" for the period between 1.4.2005 to 28.8.2005.

4. A counter affidavit has been filed on behalf of the respondents, wherein, it is stated that the commodity dealt with by the petitioner did not merit classification under entry 31 of the third Schedule of the KVAT Act. In that view of the matter, therefore, there was no change in the rate of tax when the said entry was deleted and the item "glass wool" brought within the residuary head of classification. It is further pointed out that the Amendment Act had the effect of making the higher rate of tax applicable with retrospective effect from 1.4.2005 and hence the petitioner had necessarily to discharge tax at the rate of 12.5% on the said item even for the period from 1.4.2005 to 28.8.2005. It is also contended that the petitioner, at any rate, had an alternate remedy of preferring a further appeal before the Appellate Tribunal to redress his grievance regarding the erroneous rate of tax adopted by the respondents.

5. I have heard Dr. K.B. Mohamedkutty, learned Senior counsel appearing for the petitioner and also Smt. Lilly. K.T., learned Government Pleader appearing for the

respondents.

6. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that the writ petition must succeed. A perusal of the Kerala Value Added Tax (Amendment) Act of 2005 would clearly indicate that the Validation clause therein took care of the situation where, as a consequence of the amendment to the Act, the rates of tax in respect of certain commodities stood enhanced. The Validation clause made it clear that it was only in those cases where the rate of tax had been reduced that the same would have effect with effect from 1.4.2005. In other cases where the rate of tax stood enhanced, the same would apply only with effect from the date of amendment, namely, 28.8.2005. The assessments completed against the petitioner vide Ext. P2 order as also Ext. P4 appellate order, appear to have proceeded on the basis that the higher rate of tax that was introduced in respect of the commodity would have effect from 1.4.2005 itself. This was patently wrong as a perusal of the Amendment Act itself would reveal. Under these circumstances, I am of the view that the petitioner need not be relegated to a remedy before the Appellate Tribunal to redress his grievance in respect of Ext. P4 appellate order into which Ext. P2 assessment order has now merged. I deem it fit to quash Exts. P2 and P4 orders to the extent they confirm a demand on the petitioner on the basis of adoption of the higher rate of tax at 12.5% on the item of glass wool for the period from 1.4.2005 to 28.8.2005. The 1st respondent shall now pass fresh orders of assessment for the year 2005-2006 by taking into account the observations in this judgment and giving effect to the same. The modified assessment orders shall be passed by the 1st respondent within a period of one month from the date of receipt of a copy of this judgment. It is made clear that Exts. P2 and P4 orders have been set aside only to the limited extent indicated in this judgment and not in respect of other issues that have been considered therein.

The writ petition is allowed as above.