
(2011) 07 KL CK 0192
In the High Court Of Kerala
Case No : O.T. Rev. No. 88 of 2010

Sri. B. Arjuna Raja

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 63

Citation : (2011) 187 ECR 107

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : E.P. Govindan, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran Nair, J.—The connected revision cases are filed by the Assessee u/s 63 of the Kerala Value Added Tax Act, 2003, challenging order of the VAT Appellate Tribunal confirming his assessment for 2006-2007. Two cases happened to be filed in the same matter because Tribunal dismissed the Assessee's appeal and allowed the cross objection filed by the Revenue against the order of the first appellate authority granting partial relief to the Assessee. We have heard counsel appearing for the Petitioner and Government Pleader for the Respondents and have perused the orders and records of the case.

2. The Petitioner is a dealer in timber having main office in Tamil Nadu and Branch in Kerala. Timber fully imported from Malaysia were first stocked in the godowns of the Petitioner in Tamil Nadu, wherefrom it was stock transferred to the Branch in Trivandrum and sold there. Timber is an item on which tax is payable in advance at the Boarder Check Post when it is brought from outside for sale in Kerala. The payment of advance tax is based on the value fixed by the Commissioner through a Circular for various varieties of timber like teak, Purple heart, Pin coda etc. The Petitioner without any contest remitted tax at the Check Post on the entire loads of timber brought to Kerala during 2006-2007. However, after remittance of tax at the Check Post, the Petitioner claimed refund of

substantial amount of Rs. 3,33,531/- in the returns filed stating that goods brought were sold at 3% above the purchase value. The Assessing Officer conducted enquiry and noticed that similar dealers selling imported timber have declared gross profit of 12.9% to 14% and, therefore, he rejected the return and made an addition of the minimum margin of 12% to the purchase value accounted by the Petitioner and made assessment which led to rejection of Petitioner's claim for refund and a demand for further tax. When Petitioner filed appeal against the assessment, the appellate authority found that rejection of books of accounts is well-founded, but he made estimation of turnover by making a bulk addition of Rs. 10 lakhs as against estimation of turnover made by the Assessing Officer by adding 12% gross profit to purchase turnover. The Assessee filed appeal before the Tribunal challenging the order of the first appellate authority and Department filed Cross Objection against the same order. The Tribunal after elaborately considering the nature of business, gross profit declared by similar dealers and the value adopted by the Commissioner in the Circular based on which Petitioner remitted the tax in advance at the Check Post without any contest, concluded that the assessment after rejection of accounts and by estimation of turnover by the officer was well-founded. Accordingly the Tribunal cancelled the first appellate authority's order and restored the assessment. It is against the very same order issued by the Tribunal the Petitioner has filed these two revision cases.

3. Counsel for the Petitioner contended that rejection of books of accounts is without any justification and the Tribunal went wrong in sustaining the estimation of turnover made by the Assessing Officer by making 12% addition towards gross profit to the purchase value declared by the Petitioner. Government Pleader on the other hand submitted that the assessment is quite reasonable and in fact favourable to the Petitioner because purchase value declared by him is accepted by the department even though Petitioner was not engaged in any purchase of goods in India and purchases are only made from abroad, the value of which is not accounted in Kerala. The further contention made by Government Pleader is that without any contest Petitioner paid tax at the Check Post based on the value of the commodity declared by the Commissioner vide Circular relied on in the Tribunal's order and after bringing and selling the goods in Kerala and after disabling the department to verify the type or quality of timber, the Petitioner cannot go against admission of value made in the Check Post and payment of tax made thereon. Counsel for the Petitioner has relied on various decisions of the High Court, particularly in *C.O. Devassy v. State of Kerala* (1991) 81 STC 3, *Suzion Infrastructure Service Ltd. v. Commercial Tax Officer* (2010) 35 VST 451, *KMP Timbers Vs. Commercial Tax Inspector and Another*, and decisions of the Supreme Court in *Master Cables Pvt. Ltd. Vs. State of Kerala and Another*, and *Steel Authority of India Ltd. v. Sales Tax Officer, Rourkea-I Circle and Ors.* (2010) 18 KTR 143 and the decision in *State of Rajasthan and Another Vs. Rajasthan Chemists Association*, and contended that the department is bound to accept the sales turnover conceded by the Assessee and the assessment should have been

based on books of accounts.

4. After hearing both sides, we do not think the question raised is a question of law which alone can be considered by the High Court in a revision u/s 63 of the KVAT Act. However, in view of the contentions raised by counsel for the Petitioner that the value declared and the tax paid thereon at the Check Post on entry of goods in Kerala were only based on Circular issued by the Commissioner, we proceed to consider the matter in detail.

5. First question to be considered is whether the sales turnover returned by the Petitioner was rightly rejected and if so, whether the estimation of turnover is made on a rational basis acceptable in law. Admittedly the Petitioner has no opening stock or closing stock which means that the imported timber brought to Kerala were sold like hot cakes in full truck loads without even unloading in his business place. Construction industry has been booming in Kerala for several years and Kerala is a major market for timber imported from Malaysia and Burma. In order to control the evasion of tax taking place on the sale of imported timber in Kerala, the Commissioner issued a Circular by which every dealer bringing timber to Kerala is required to pay advance tax at the Check Post on the value of the timber fixed in the Circular issued by him. Admittedly, the Commissioner has taken into account the market value of various varieties of timber, provided dealer margin there from and has fixed only reasonable price for payment of advance tax at the Check Post. The Petitioner without any contest paid tax on the entire consignments brought based on the value fixed by the Commissioner in the Circular. Even though Petitioner is not purchasing any goods in India and is only transporting goods from his Go down in Tamil Nadu to Kerala, he himself is accounting purchase value which is nothing but the stock transfer value declared by him in the transport documents. Government Pleader rightly pointed out that the purchase value accounted by the Petitioner is not the real purchase value and is some value fixed by him to suit his interest. We are in complete agreement with this because the cost of timber imported has to be fixed by taking into account the purchase cost abroad, shipping freight, customs duty, cost of transport to go down, handling charges etc. The imports from abroad are always in bulk and, therefore, it is the Petitioner who works out the cost of goods brought each time to Kerala. The value declared by the Petitioner in the transport document as purchase value is certainly less than the value fixed by the Commissioner in the Circular for payment of tax at the Check Post and that is why Petitioner claimed refund of tax paid at the Check Post. If the Petitioner had raised objection at the time of collection of tax at the Check Post, the department would have got an opportunity to establish that the value declared in the document is far less than the market value which is the main conclusion drawn by the Tribunal justifying addition to the declared turnover. When purchase value accounted by the Petitioner itself is not purchase value but is a value declared by the Petitioner in the transport document for transporting stock from his own go down in Tamil Nadu to Kerala, we feel there is nothing wrong in the Assessing Officer making gross profit addition to the same for

assessment, particularly because Petitioner paid tax on a higher value at the Check Post on consignments brought to Kerala. On going through the Tribunal's order, we find that the Tribunal has taken note of the fact that the value fixed by the Commissioner for different varieties of timber for collection of advance tax are based on prevalent market value. It is common knowledge that the current price of timber that is, after 3-4 years of the relevant year, is more than double the price fixed by the Commissioner in the Circular based on which advance tax was paid by the Petitioner without contest. Petitioner has no case that there was decline in the price of timber after the issuance of Circular by the Commissioner. On the other hand, the steady demand of timber in the market is evident from the fact that Petitioner has "nil" closing stock. We are, therefore, of the view that the Assessing Officer, first appellate authority as well as the Tribunal rightly rejected the sales turnover declared by the Petitioner which was below the value declared at the entry Check Post where tax was paid on all consignments brought and sold in Kerala.

6. The next question is only with regard to the addition. What we notice from the Tribunal's order is that the Tribunal accepted the estimation of gross profit at 12% based on evidence gathered by the department from similar traders who have declared gross profit which ranges from 12.9% to 14%. Here again what we find is that the authorities below including the Tribunal adopted lower than the lowest percentage of gross profit declared by similar dealers. In fact, the gross profit addition is made to the purchase value declared by the Petitioner which is admittedly not the real purchase value but the value fixed by Petitioner. We do not find any justification to modify the percentage of gross profit addition made for the purpose of estimation of turnover. We notice from the Tribunal's order that they have considered the market value of each and every variety of timber transported and sold by the Petitioner and the value fixed in the Circular issued by the Commissioner and have justified the assessment which is by making 12% gross profit addition to the purchase value declared by the Petitioner himself. Consequently we do not find any ground to interfere with the orders of the Tribunal. Revision cases are accordingly dismissed.