(2009) 01 KL CK 0014

In the High Court Of Kerala

Case No : S.T. Rev. No. 243 of 2005

State of Kerala APPELLANT

Vs

Alex V. Chacko RESPONDENT

Date of Decision : 01-01-2009

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5(1), 7(7)
Kerala General Sales Tax Rules, 1963 — Rule 9(1)

Citation : (2009) 2 KLT 840 : (2010) 27 VST 278

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; C.C. Thomas, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether sales tax recovered and remitted by the awarder from the contractor''s bill is to be excluded from the turnover for the computation of tax at compounded rate as provided u/s 7(7) of the Kerala General Sales Tax Act 1963. The assessment involved is for the year 1998-99. The respondent-assessee was engaged in civil construction work and he applied for permission to pay tax at compounded rate u/s 7(7) of the Act. There is no dispute that the work involved was civil construction work attracting tax at the compounded rate provided u/s 7(7) of the Act. The Special Government Pleader appearing for the State contended that Section 7(7) provides for payment of tax at compounded rate on the whole amount of contract and not on the net amount received by the respondent after recoveries of tax by the awarder. Counsel for the respondent contended that the Tribunal was following their earlier order in another case against which the State has not filed revision. We do not think the objection of the respondent is tenable because the failure or omission to file revision in another case does not stand in the way of the State filing revision in an appropriate case. The Tribunal''s order is binding on the State only for the assessment pertaining to which Tribunal has passed the orders. In other words, for other years or in the case of any other assessee, the

State is free to agitate the matter decided by the Tribunal against it.

2. Section 7(7) which give rise to this revision case is extracted hereunder:

Notwithstanding anything contained in Sub-section (1) of Section 5 every contractor, in civil works of construction of buildings, bridges, roads, railway tracks, walls, including sea walls, dams and canals including any repair or maintenance of such civil work may at his option instead of paying tax in accordance with Clause (iv) of that sub-section pay tax at the rate of two per cent, on the whole amount of contract and which shall be deducted from the payments made by the awarder at every time including advance payment and shall remit it to Government in such manner as may be prescribed.

3. It is obvious from the above that the compounded rate of tax is provided on the whole amount of contract and not on the net amount received by the contractor after recoveries of tax made by the awarder. In fact, the scheme of deduction and payment of tax by the awarder does not amount to determination of tax which is a matter of adjudication by the assessing officer wherein the assessee is entitled to plead that recovery does not represent actual tax payable. The scheme for deduction of tax is only a method of recovery of tax in advance on an ad hoc basis and the amount so recovered and remitted by the awarder need not be the actual tax payable. In other words, the assessee is entitled to get credit of the entire amount recovered and remitted by the awarder in the assessment. The consequence is that recoveries and remittances so made will be treated as payments made by the assessee. Therefore, until the assessment is completed, the tax liability adjudicated and credits given, the recovered amount remains unadjusted towards tax. In fact, recovery of tax by the awarder from the contractor is not similar to collection of tax by the dealer from the customers on sale of goods. We, therefore, reverse the order of the Tribunal and hold that the tax recovered and remitted by the awarder from the bills of the contractor should also be reckoned as turnover for the purpose of determination of tax on contract amount, whether it be at compounded rate or not. However, if the contract provides for separate reimbursement of actual tax paid by the contractor over the contract amount, then the same will amount to tax collection under Rule 9(1) warranting exclusion from taxable turnover. However, this does not affect tax payable under the compounding scheme which is payable not on the taxable amount but on the whole contract amount which includes the tax recovered from out of contract payments made by the awarder. The sales tax revision is allowed as above.