(2007) 11 KL CK 0050

In the High Court Of Kerala

Case No : ST Rev No. 375 of 2004

State of Kerala APPELLANT

Vs

K. Kunhalavi, Contractor RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 13, 5, 7(12)
Kerala General Sales Tax Rules, 1963 — Rule 22A(2), 22A(4)

Citation : (2007) 11 KL CK 0050

Hon'ble Judges : H.L. Dattu, C.J;K.M. Joseph, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; Party-in-person, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, C.J.—The order passed by the Assessing Authority in forfeiting the tax deducted at source for the assessment year 1997 - 1998, was the subject matter before the Tribunal at the instance of the assessee.

2. The Tribunal has allowed the Appeal and has directed the Assessing Authority to refund the tax which has been forfeited by the Assessing Authority while passing the assessment order for the assessment year 1997 - 1998.

3. The State is aggrieved by the said order of the Tribunal. Therefore, they are before us in this Tax Revision Case. The Revenue has raised the following questions of law for our consideration and decision:

1) Is not the Tribunal in error in finding that claim for refund under Rule 22A(4) is tenable in law ?

2) Is the order of Tribunal is in violation of the provisions of Sub-section 12 of Section 7 of KGST Act ?

3) Has not the Tribunal erred in finding that the turnover of the Assessee/

Respondent for the year in question was admittedly below the taxable limit, whereas the assessee/respondent has declared a gross contract receipt of Rs.2,20,476/- in the return filed which is above the minimum prescribed under Sections 5 and 13 of KGST Act ?

4. For the assessment year 1997 - 1998, the assessee had conceded a gross contract receipt of Rs.2,20,476/-, total turnover of Rs.1,54,330.30 and the taxable turnover as nil.

5. In the assessment order in question, the assessing authority has noticed that the awarder of the contract had deducted tax at source in a sum of Rs.47,795/-.

6. The Assessing Authority while completing the assessment has accepted the return filed by the assessee and has closed the assessment for the assessment year 1997 - 1998 as nil assessment. For the reasons best known, has passed an order forfeiting a sum of Rs.47,795/- which is an amount which was deducted at source by the awarder of the contractor towards the tax liability under the Act.

7. Since there was no reason for the Assessing Authority to have forfeited the tax deducted at source by the awarder of the contractor, the assessee had filed an appeal before the first Appellate Authority. The first Appellate Authority without examining the claim of the assessee in the proper perspective, has mechanically confirmed the order passed by the Assessing Authority.

8. The assessee had called in question the aforesaid order before the Tribunal. The Tribunal in its well considered order, has directed the Assessing Authority to refund the tax deducted at source to the assessee. While doing so, it has also interpreted Sub-rule (4) of Rule 22A of the KGST Rules.

9. Sub-rule (4) of Rule 22A of the Rules commences with the non-obstante clause. It says that notwithstanding anything contained in Sub-rule (2) of Rule 22A, if the total turnover in respect of the contractor for the year does not exceed the assessable limit prescribed u/s 5, the amount recovered and remitted by the awarder under Sub-rule (2) for the assessment period, either shall be refunded or adjusted, as the case may be by the Assessing Authority.

10. In the instant case, while completing the assessment for the assessment year 1997 - 1998, the Assessing Authority has specifically observed that the assessee falls below the assessable limit as prescribed u/s 5 of the Act. Having said that, the Assessing Authority could not have forfeited the tax deducted at source. Keeping in view the alternatives provided under Sub-rule (4) of Rule 22A of the Rules, the Tribunal has directed the Assessing Authority to refund the tax deducted at source from the amounts awarded by the contractor to the assessee. Having seen Sub-rule (4) of Rule 22A of the Rules and the Orders passed by the Tribunal, we are of the view that the Tribunal has not committed any error whatsoever. Therefore, the order passed by the Tribunal does not require interference. Accordingly, the Revision Petition filed by the Revenue requires to be rejected and it is rejected.

Ordered accordingly.

