
(2011) 08 KL CK 0030
In the High Court Of Kerala
Case No : S.T. Rev. No. 21.of 2011

State of Kerala

APPELLANT

Vs

Kalyan Tourist Home

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 7(1)(b)

Citation : (2012) 51 VST 66

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

Bench : Division Bench

Advocate : Muhammed Rafeeq, Government Pleader, for the Appellant; N. Muraleedharan Nair and Smt. K. Hymavathy, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The only question raised is whether the Tribunal was justified in condoning the delay in filing the application for compounding and in granting compounding facility to the respondent to pay turnover tax on liquor u/s 7(1)(b) of the Kerala General Sales Tax Act, 1963 after the closure of the relevant assessment year. We have heard the Government Pleader for the State and the counsel appearing for the respondents. The facts leading to the controversy are the following : The respondent is running a bar hotel. During 2008-09 he was liable to pay turnover tax on liquor at 10 per cent under the KGST Act and was also liable to pay tax on sale of cooked food at four per cent under the KVAT Act. Both the KGST and the KVAT Acts, respectively, provide for compounding facility for payment of tax on liquor and cooked food, respectively. The respondent obviously had to file applications for compounding before separate authorities under both the statutes; Under the compounding scheme provided u/s 7(1)(b) of the KGST Act, respondent was bound to make an application in form 21 on or before May 1, 2008. Similar is the provision under the KVAT Act for filing application for compounding for payment of tax on cooked food. The respondent did not submit any application for payment of tax at

compounded rate u/s 7(1)(b) of the KGST Act for liquor sales on or before the due date and not even before the end of the relevant year, i.e., 2008-09. However, a petition to condone the delay along with a belated application for payment of tax at compounded rate on cooked food was submitted under the KVAT Act before the Deputy Commissioner on December 31, 2008. The delay was condoned and compounding was allowed by the Deputy Commissioner for payment of tax on cooked food vide order dated January 16, 2009. In between there was an inspection in the business premises of the respondent which led to detection of unaccounted sales of liquor and penalty was levied on the respondent. Further, after the closure of the financial year, the regular turnover tax assessment on liquor was also completed on April 30, 2009. Counsel for the respondent submitted that the assessment is in appeal before the appellate authority.

3. After end of the year and after completion of assessment, the respondent filed an application for compounding to pay turnover tax at compounded rate on liquor sales under KGST Act along with a delay condonation petition before the assessing officer on May 18, 2009 which was rejected by him. The respondent filed appeal against this order before the appellate authority. The Deputy Commissioner (Appeals) dismissed the appeal by relying on the judgment of this court reported in *Annie George Vs. State of Kerala*, . However, on second appeal, the Tribunal allowed it by condoning the delay in filing application for compounding and directed assessment at compounded rate on the liquor sales turnover. It is against this order, the revision is filed by the State. After hearing both sides, we are unable to sustain the order of the Tribunal for more than one reason. In the first place, under the scheme of compounding, the application has to be filed on due date and orders should be passed thereon to entitle the assessee to start remitting tax at compounded rate from the beginning of the assessment year. Therefore, the power to condone delay is an exceptional power which does not authorise the assessing officer to condone delay beyond the end of the year. In this case, the application for compounding with delay condonation petition was filed 1 1/2 months after the end of the relevant year. Further, regular assessment itself was completed much before the filing of the compounding application with delay condonation petition. Payment of tax under the compounding scheme is an alternate to regular assessment based on turnover. When regular assessment is completed, there is no scope for entertaining an application for compounding thereafter. The Tribunal, in our view, has committed a "patent mistake in condoning the delay in filing the compounding application, which was filed after closure of the relevant financial year. The Tribunal has not stated as to what will happen to the regular assessment completed which is separately contested in appeal. If the Tribunal order is also complied with, the assessing officer will have to pass one more order of assessment under the compounding scheme which will lead to two assessments for the same year wherein the tax amount will be different. This situation is not visualized under the provisions of the Act and Rules. The ground

shown in support of the delay condonation petition, in our view, is also not reasonable or genuine because, for food sales assessee availed of the facility under the KVAT Act by making application at least at the fag end of the year. In fact the application was submitted with delay of an year, i.e., on May 18, 2009. We do not know on what basis the Tribunal could accept the grounds stated by the respondent in support of the delay condonation petition, assuming that delay could be condoned even beyond the year for which the application was submitted. We therefore, allow this sales tax revision by setting aside the orders of the Tribunal and by restoring the first appellate authority's order rejecting the delay condonation application and compounding application. However, we make it clear that the respondent will be free to pursue the appeals filed against the regular assessment and contest the same on other issues.