
(2011) 01 KL CK 0232
In the High Court Of Kerala
Case No : OT. Rev. No. 18 of 2009

State of Kerala

APPELLANT

Vs

Malabar Ornaments (P.) Ltd.

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 6, 8(f)(i)

Citation : (2013) 57 VST 309

Hon'ble Judges : C.N. Ramachandran Nair, J;Bhabani Prasad Ray, J

Bench : Division Bench

Advocate : Mohammed Rafeeq, Government Pleader, for the Appellant; S. Anil Kumar (Trivandrum) and K.S. Hariharan Nair, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—This is a revision case filed by the State challenging the order of the Tribunal passed in the case of the respondent-assessee for the assessment year 2006-07. The respondent is running a jewellery shop selling gold and silver ornaments. The respondent claimed the benefit of payment of tax under the compounding scheme u/s 8(f) (i) of the Kerala Value Added Tax Act, 2003 for the year 2006-07. Even though the assessing officer granted compounding facility, which is payment of tax at 200 per cent of the highest tax payable for any of the immediately three preceding years, the issue raised is whether the highest tax payable to be reckoned from out of the preceding years is the assessed tax or the tax due under the return filed by the assessee. On facts, the Tribunal found that among the three preceding years, the highest tax payable as per return filed by the assessee was for the year 2005-06 and so much so the tax payable under compounding for 2006-07 has to be determined at 200 per cent of the tax returned as tax payable by the assessee for the year 2005-06. It is against this order of the Tribunal, the State has filed this revision contending that tax at compounding rate is payable based on highest tax returned for any of the years or the tax found as payable based on the

assessment. We have heard learned Government Pleader for the petitioner and learned counsel appearing for the respondent-assessee.

2. The relevant provision under which the assessment has to be made under the compounding scheme is extracted hereunder for easy reference:

S. 8(f) (i): any dealers in ornaments or wares or articles of gold, silver or platinum group metals may at his option, instead of paying tax in respect of such goods in accordance with the provisions of section 6, pay tax at 200 per cent of the highest tax payable by him as conceded in the return or accounts, either under this Act or under the Kerala General Sales Tax Act, 1963 (15 of 1963), for a period of twelve months during any of the three consecutive years preceding that to which such option relates.

3. What is clear from the above is that tax payable under the compounding scheme under the Kerala Value Added Tax Act is 200 per cent of the "highest tax payable by the assessee as conceded in the return or accounts under this Act or under the Kerala General Sales Tax Act". It is pertinent to note that the above section does not provide for reckoning the assessed tax as the basis for payment of tax at compounded rate. On the other hand, what is stated is that the assessee should pay tax at compounded rate, i.e., 200 per cent of the highest tax payable by the assessee for any of the consecutive three preceding years based on the "return or accounts". The Tribunal on facts found that for the above three years, the tax due as per return and accounts and the assessed tax are different. In other words, turnover and tax returned as payable in the return were rejected in the course of assessment and the assessing officer made best judgment assessments demanding higher tax for all the immediately preceding three years, i.e., 2003-04, 2004-05 and 2005-06.

4. However, the section does not provide for payment of tax at compounded rate for the assessment year 2006-07 based on the highest tax assessed and demanded for any of the immediately three preceding years relevant for the year in question. The Tribunal therefore proceeded to consider as to which year the highest tax is returned as payable by the assessee in the return filed, and the Tribunal found, among the three years the highest tax returned by the assessee as payable in the return filed is for the year 2005-06. Therefore, the Tribunal directed the assessing officer to demand tax at compounded rate for 2006-07 at 200 per cent of the tax payable for the year 2005-06. Even though learned Government Pleader submitted that the tax assessed and found payable should be the basis for payment of tax at compounded rate, we do not find any such provision in the section of the statute above stated. In our view, the choice the assessing officer is only to consider the return filed by the assessee as well as accounts. The limited jurisdiction of the officer is to adopt tax payable based on the accounts, if the same is more with reference to the turnover returned and tax as shown payable under the return. In other words, if the assessee does not disclose full turnover and tax payable in the return filed over the turnover and tax payable as reflected in the accounts, then tax payable should be taken from

the accounts and not from the return. However, if the tax declared as payable in the return is equal or more than the tax found payable under the accounts, then such amount of tax as disclosed in the return has to be reckoned for the purpose of assessment of tax at compounded rate for the relevant year. So long as the provision in the statute does not provide for assessment of tax at compounded rate based on the tax assessed or demanded for any of the preceding three years, the Department cannot raise such a contention before the statutory authorities or before the Tribunal or before this court. We therefore uphold the order of the Tribunal and dismiss this revision case.