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(2011) 01 KL CK 0239

In the High Court Of Kerala

Case No : ST. Rev. No. 7 of 2010

State of Kerala APPELLANT

Vs

Panchami Jewellers RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17(4), 19, 7

Citation : (2012) 50 VST 291

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

Bench : Division Bench

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

Judgement

C.N. Ramachandran Nair J.

1. The question raised is whether the Tribunal was justified in cancelling the assessment under compounded rate opted by the assessee u/s 7 of the Kerala General Sales Tax Act, 1963. We have heard the Government Pleader appearing for the petitioner and Sri Muraleedharan Nair, counsel appearing for the respondents-assessees. The assessments involved for both the assessees are for the year 2002-03. In the beginning of the financial year, the assessees made compounding application in form No. 21 and the assessing officer accepted the same by issuing demand notice in form No. 22. Tax at compounded rate payable that was accepted by the assessees was at the rate of 120 per cent of the tax payable for the previous year. However, by the Finance Act, 2002, which was published on July 29, 2002, the compounded rate was increased from 120 per cent to 200 per cent. The respondents-assessees however continued to pay lower amount of tax at compounded rate, i.e., without paying revised rate under the amended provision until October, 2002. However on October 14, 2002, the respondents noticing increased liability under the compounding scheme applied for permission to withdraw compounded rate of payment, that is by opting for payment of tax on the actual turnover. Even though this was accepted by the

assessing officer and assessments were completed based on the returns filed u/s 17(4) of the Act, later based on the decision of this court in Udaya Traders v. Sales Tax Officer [1995] 99 STC 41 (Ker), which held that once compounding is opted by the assessee and accepted by the Department, assessee has no escape from it, and withdrawal is not permissible, the assessing officer rejected the assessees'' applications and assessments were made u/s 19 of the Act demanding tax at the compounded rate which is the revised rate prescribed by the Finance Act, 2002.

2. During hearing the Government Pleader relied on the decision of one of us (CNR (J)) in Prakash Jewellery v. State of Kerala [2004] 12 KTR 543 (Ker), wherein the position canvassed by the State was accepted by this court and directed the assessing officer to complete the assessment for the year 2002-03 at the compounded rate based on the Finance Act, 2002. We see no reason to deviate from the view taken by the learned single judge in the above referred decision. Following the said decision we allow the revisions by vacating the order of the Tribunal and by restoring the order of the first appellate authority confirming section 19 assessment.

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