**(2013) 09 KL CK 0086**

**In the High Court Of Kerala**

**Case No :** S.T.R. No. 87 of 2011

State of Kerala APPELLANT

Vs

Riyas Jewellery RESPONDENT

**Date of Decision :** 26-09-2013

**Acts Referred:**

**Citation :** (2013) 4 KLT 301

**Hon'ble Judges :** Manjula Chellur, C.J;A.M. Shaffique, J

**Bench :** Division Bench

**Advocate :** Bobby John Pulikkaparambil, Government Pleader, for the Appellant; K.B. Muhammed Kutty, A.V. Muralidharan and K.M. Firoz, for the Respondent

## Judgement

Dr. Manjula Chellur, C.J.—The assessment year pertaining to the case on hand is 2004-2005. By virtue of S. 7(1)(a) of Kerala General Sales Tax Act 1963, so far as the dealer dealing in gold or silver ornaments or wares, he has the option of paying the tax at 130% of the tax payable by him as conceded in the return or accounts for the immediate preceding year or the tax paid for the immediate preceding year whichever is higher. It is not in dispute under S. 5 and 5A charging Sections, the tax was paid and so also additional tax was paid under S. 5D of the aforesaid Act. The entire controversy revolves round the question whether the additional tax paid under S. 5D can also be taken into consideration to mean to come within the tax paid for the immediate preceding year whichever is higher that is the last sentence of S. 7(1)(a). In order to have a better understanding of S. 7(1)(a), one has to read explanation which was available according to the respondent assessee to know that it would mean that the tax in the main provision includes only the tax referable to S. 5 and also S. 5A and not S. 5D. Explanation admittedly was in existence prior to amendment inserted (Act 7 of 2002) which came into effect from 1.4.2002. After the insertion of ''the tax paid for the immediate preceding year'', no further amendment was thought of so far as the explanation is concerned. Whether reading of the main provision along with explanation would exclude the additional tax paid under S. 5D of the

 

Act is the controversy raised before us. What was available in the explanation prior to amendment in the main provision cannot be read into the main provision to understand the additional insertion made to the main provision that is S. 7(1)(a). Therefore, if the explanation were to be read to understand the main provision the very purpose of insertion of additional sentence to S. 7(1)(a) would be defeated. The intention of the Legislature to add additional words to S. 7(1)(a) was with a purpose to see that if, after the computation of tax or processing the returns, the tax payable is higher than the conceded tax, such benefits should not escape from the revenue. Therefore, by restricting the meaning of the word ''tax paid'' only to mean tax paid under S. 5A or 5D the very purpose would be defeated. Therefore, according to us, it would include additional tax paid under S. 5D. Therefore, the interpretation of the Tribunal by order which is impugned before us deserves to be set aside.

Accordingly, the Revision Petition is allowed setting aside the order of the Tribunal dated 9.11.2010.