(2025) 02 KL CK 1283

In the High Court Of Kerala

Case No : Other Tax Revision (VAT) No.96 Of 2020

Suleiman APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 17-02-2025

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 6(2)
Kerala Value Added Tax Rules, 2005 — Rule 38(5)

Citation : (2025) 02 KL CK 1283

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Easwaran S., J

Bench : Division Bench

Advocate : Marian G.M.Tharakan, Resmitha Ramachandran

Final Decision : Disposed Of

Judgement

Dr. A.K.Jayasankaran Nambiar, J.

1. This O.T. Revision is preferred by the petitioner/assessee aggrieved by the order dated 22.01.2018 of the Kerala Value Added Tax Appellate Tribunal, Ernakulam in T.A.(VAT).No.525/2014 and the order dated 08.11.2019 in Review Petition No.18/2018 that was preferred by the petitioner before the said Tribunal, seeking a review of the order passed in the appeal.

2. The brief facts necessary for disposal of the O.T. Revision are as follows:

The petitioner, a dealer registered on the rolls of the Commercial Tax Officer, Vadakkanchery, Thrissur, was engaged in the business of gold and silver ornaments. For the months of April, 2012 to June, 2012, he had filed Nil returns. An enquiry conducted by the Assessing Authority at the business premises of the petitioner, however, revealed that he had been conducting business in the said premises during the aforesaid return period. The Assessing Authority, at the time of inspection, recovered seven numbers of sales bill books from the business premises of the petitioner. In the absence of any books of account produced by the petitioner, the Assessing Authority proceeded to complete the assessment on best judgment basis by estimating the sales turnover from the sales bill books recovered from the premises. In that process, the Assessing Authority estimated the total sales from the sales bill books recovered and added thereto the purchase turnover under Section 6(2) of the Kerala Value Added Tax Act [hereinafter referred to as the "KVAT Act"] by calculating the same at 50% of the total sales turnover and then added an equal amount of the total suppression so calculated towards probable omission and suppression. The total turnover proposed by this exercise was in an amount of Rs.48,51,446/-.

3. Aggrieved by the order of the Assessing Authority, the petitioner preferred an appeal before the First Appellate Authority. The First Appellate Authority reduced the addition towards probable omission and suppression to 60% of the actual suppression and also directed the Assessing Authority to allow the special rebate as per the provisions under Rule 38(5) of the KVAT Act. Save for this limited modification, the appeal preferred by the petitioner was otherwise dismissed.

4. In a further appeal carried by the petitioner before the Appellate Tribunal, the Appellate Tribunal merely reduced the addition towards probable omission and suppression to 10% of the actual suppression calculated by the Assessing Authority. The demand against the petitioner was otherwise confirmed even by the Appellate Tribunal. A Review Petition that was filed by the petitioner before the Appellate Tribunal was also dismissed by the Appellate Tribunal. It is aggrieved by the said order of the Appellate Tribunal that the petitioner/assessee is before us through this O.T. Revision.

5. We have heard Smt. Marian G.M. Tharakan, the learned counsel for the petitioner as also Smt. Resmitha Ramachandran, the learned Government Pleader for the respondent.

6. On a consideration of the rival submissions, we find that although the finding of the authorities below regarding the need for estimation of the turnover of the petitioner cannot be found fault with, there was a mistake occasioned by all the authorities in carrying out that estimation. We find that over and in addition to the sales turnover estimated based on the sales bill books recovered from the premises of the petitioner, the Assessing Authority had added 50% of the sales turnover so estimated towards purchases made under Section 6(2) of the KVAT Act. There is no finding by the Assessing Authority as to why the turnover of the purchases made by the petitioner had to be added to the sales turnover estimated by the Assessing Authority more so when it is the case of the Revenue itself that the purchases effected by the petitioner were of old ornaments which he had melted for the purposes of making new ornaments which were allegedly sold by him. In other words, the addition of purchase turnover of old gold to the sales turnover estimated in relation to the petitioner would tantamount to a duplication of turnover and, therefore, was clearly unwarranted. Save for this erroneous computation of suppressed turnover, we cannot find fault with the other findings of the Tribunal with regard to the additions for probable omission and suppression and the grant of special rebate as per the KVAT Act.

7. If the additions made towards Section 6(2) purchases are deleted, then the total tax liability of the petitioner, after granting the special rebate, would only be in an amount of Rs.1,32,213/-. The interest dues of the petitioner would have to be computed on the said amount from 23.01.2013 onwards. We find from the documents produced by the petitioner along with I.A.No.2 of 2023 in this Revision Petition that the respondent has initiated recovery proceedings against the petitioner, including a proposal for the sale of movable properties that were attached from the petitioner. The details of the movable properties are enclosed in Annexure XI, produced along with the said I.A. Since we have directed the tax liability to be re-computed based on our finding that the addition of purchase turnover under Section 6(2) of the KVAT Act was wholly unwarranted on the facts of the instant case, we deem it appropriate to direct the Assessing Authority to re-compute the tax liability of the petitioner, based on the directions of the Tribunal as modified by the directions in this order, and issue a fresh order of assessment giving effect to the directions of the Tribunal and this Court. The Revenue authorities shall, on their part, issue a fresh notice of demand based on the consequential order passed by the Assessing Authority and thereafter, the demand amount shall be recovered by effecting a sale of the movable properties already attached from the petitioner, which we believe would be sufficient for satisfying the tax liability of the petitioner. To enable the Revenue authorities to do so, we quash Annexures X and XI notices produced along with the I.A.

The O.T. Revision is disposed as above.