
(2012) 01 KL CK 0148
In the High Court Of Kerala
Case No : O.T.R.No. 45 of 2011

Sultan Gold International

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 12(1), 6(2)
Kerala Value Added Tax Rules, 2005 — Rule 38(5)

Citation : (2012) 2 KLT 158 : (2013) 58 VST 532

Hon'ble Judges : C.N. Ramachandran Nair, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : S. Anil Kumar Trivandrum and K.S. Hariharan Nair, for the Appellant;
Bobby John), for the Respondent

Judgement

C.N. Ramachandran Nair. J.

1. Question raised is whether the Tribunal was justified in declining rebate of tax under S.12(1)(a) of the KVAT Act read with R.38(5) of the KVAT Rules on the purchase turnover of old gold ornaments from the tax determined on estimated turnover based on inspection done during the return period, August 2006. We have heard counsel for the petitioner and also Government Pleader appearing for respondents. The petitioner is a gold dealer in Kasaragod whose place of business was inspected on 9.8.2006. Massive suppression of sales of Rs. 45 lakhs was found out which was for the four hours business carried on the date of inspection. Based on the inspection, turnover for the return period August 2006 was estimated by making addition of three times to the actual suppression besides treating the suppression itself as turnover. To make up for the suppressed purchases, 80% of the addition on sales turnover was treated as purchase suppression and tax was demanded under S.6(2) of the Act. Even though petitioner claimed rebate of tax on purchase under S.12(1)(a) read with R.38(5), the Assessing Officer who made best judgment assessment u/s 24 declined it. In first appeal quantum relief as well as rebate was allowed. However,

on second appeal by the State, Tribunal reversed it restoring the assessment. It is against this order of the Tribunal petitioner has filed the appeal.

2. Since the controversy is only on the eligibility for rebate of purchase tax assessed on estimated turnover, we have to necessarily refer to the relevant Section and the Rule which are extracted hereunder:

S.12(1)(a) Special rebating in certain cases.- (1) In calculating the net tax payable by a dealer for a return period, there shall be deducted from the tax payable for the return period, a sum equal to,-

(a) the tax paid under sub-section (2) of section 6; and

.....

R.38. Best judgment Assessment--

.....

(5) Where the taxable turnover of a dealer is determined resorting to best judgment assessment, proportionate special rebate to the tax liability fixed on the turnover under sub-section (2) of section 6 consequent to any addition made in the turnover may be given while fixing the tax liability in respect of such assessment.

Admittedly petitioner is entitled to rebate of tax under S.12(1) by virtue of R.38(5) because under the said Rule, in the course of making best judgment assessment, assessee is entitled to rebate under S. 12(1)(a) on the tax payable on estimated purchase turnover. However, assessee is declined the benefit which was confirmed by the Tribunal for the reason that R.38(5) was introduced only by S.R.O. 7/2008 with effect from 2.1.2008. While the petitioner's case is that the Rule is only clarificatory in nature, the contention raised by Government Pleader is that in the absence of retrospectivity, Rule does not apply for any period prior to January 2008. After hearing both sides, what we notice is that S.12(1)(a) which is the substantive provision, provides for granting rebate on purchase tax paid under S.6(2) against tax payable on the sales turnover. Obviously Section as stated therein conceives voluntary payment of both output tax and purchase tax and the procedure provided therein is to pay the net tax after availing rebate on the purchase tax. The Section as such does not specifically cover a situation of best judgment assessment after rejection of the turnover returned by the dealer. However, when the concept of tax liability under the Section is only the net tax payable, it goes without saying that in all type of assessments the tax payable is the net tax on sales turnover after granting rebate of the tax payable under S.6(2) on the purchases. Therefore, in our view, the "tax paid" under sub-s.(2) of S.6 of S.12(1)(a) will mean tax paid based on return filed or the tax payable based on assessment made by the officer so that in either case the liability under S. 12(1)(a) is net tax liability after providing for rebate on purchase tax. This position is only clarified by the subsequent introduction of R.38(5) which expressly grants the benefit of rebate on purchase tax payable under S.6(2) to

the dealer in the case of assessment made by estimation of turnover. We do not think the Legislature or the Government intended denial of rebate on purchase tax liability under S.6(2) against tax payable by the dealer for any return period. So much so, in our view, the contention of counsel for the petitioner that the Rule is only clarificatory is tenable. We accordingly allow the revision for the limited purpose of granting rebate of tax determined as payable under S.6(2) against the tax payable on the estimated sales turnover for the return period August 2006. Revision is allowed in part by sustaining turnover assessed and confirmed by the Tribunal but by directing the officer to grant rebate of purchase tax as stated above.