

(2012) 07 KL CK 0214

In the High Court Of Kerala

Case No : O.T. (Rev) . NO. 113 of 2011

T.A. Simon, Kerala Hardware, Oottupara, Wadakkancherry
Thrissur District

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 67

Citation : (2012) 07 KL CK 0214

Hon'ble Judges : Thottathil B. Radhakrishnan, J;K.Vinod Chandran, J

Bench : Division Bench

Advocate : Harisankar V. Menon, Smt. Meera V. Menon and Sri. Mahesh V. Menon, for the Appellant; Bobby John, for the Respondent

Judgement

Vinod Chandran, J.

The assessee carrying on the business of hardwares in the name of M/s. Kerala Hardware is in revision challenging the orders of the Tribunal. The assessee was before the Tribunal challenging Annexure A order of penalty as modified by the first appellate authority. On an inspection conducted on the premises of the assessee, the assessee was found to maintain a parallel account in the personal computer of the assessee. The books of accounts were verified with the parallel accounts and sales suppression to the tune of Rs. 62,43,448/- as also purchase suppression coming to Rs. 68,49,788.14/- was detected. The assessee was issued notice with respect to the attempted evasion of tax. The assessee appeared before the Intelligence Officer and filed detailed objections and was also afforded an opportunity of hearing. The Intelligence Officer by Annexure A order elaborately considered the objections of the assessee. Some of the objections with respect to duplication as also the turn over included in the opening balance being treated as sales consideration etc; were allowed by the Intelligence Officer. However, the sales suppression to the tune proposed was confirmed and the purchase suppression was reduced to Rs. 62,63,445/-. The

total tax sought to be evaded was computed as 11,00,382/- and double the tax so sought to be evaded was imposed as penalty u/s 67 of Kerala Valued Added Tax Act, 2003. The assessee was in first appeal, which concluded by Annexure B order granting substantial modification. The suppression detected by the Intelligence Officer both on the count of sales and purchases, after looking into the materials was confirmed on facts by the first Appellate Authority. However, the fixation of gross profit at the rate of 20% was found to be improper on account of no material evidence being available with the department to arrive at the said rate. The gross profit conceded by the assessee was directed to be adopted in fixing the sales turn over with respect to the estimation made of the purchase turn over. The assessee's contention regarding apportionment of the suppressed turn over to 12.5% and 4% taxable items in the ratio of 12:88 was rejected in toto by the Assessing Officer and the entire turn over detected as suppressed was levied tax at the rate of 12.5%. On a verification of the sales and purchase bills the Intelligence Officer found that purchases included goods taxable at 4% also and hence directed the Intelligence Officer to apportion the turn over suppression at 50% each. The Intelligence Officer was directed to recompute the amount of tax sought to be evaded and impose penalty at two times of the computed amount. The assessee was again before the Tribunal which confirmed, all the findings of the Intelligence Officer as confirmed, by the first Appellate Authority. The one other issue which the assessee agitated before all the authorities was the issue of input tax credit with respect to the alleged purchase suppression. As on the other issues all the authorities concurred in rejecting the prayer of the assessee to grant input tax credit on the purchase turn over even when there was evidence of tax sufferance. The Tribunal however thought it fit, in the facts and circumstances of the case, to limit the penalty to one and half time the tax sought to be evaded.

2. The assessee is before us raising the following questions of law:-

(i) Whether on the facts and in the circumstances of the case has not the appellate tribunal gone wrong in failing to take note of the fact that the alleged unaccounted sales as per compact disc is only an estimate and not reflecting actual sales?

(ii) Has not the appellate tribunal gone wrong in finding that there is purchase suppression by the appellant?

(iii) Has not the appellate tribunal failed to take note of the fact that there is a repetition of Rs.1,07,340/- in the estimation made by the authorities below?

(iv) Has not the appellate tribunal failed to take note of the fact that the revision petitioner was engaged in the sales of 4% items mainly which is clear even from the purchase suppression alleged by the Intelligence Officer and so much so the sales turn over should also be taken in the same proportion between 4% and 12.5% items?

(v) Has not the appellate Tribunal failed to take note of the fact that the

estimation of the turnover towards purchase suppression and sales suppression actually amounts to duplication?

(vi) Whether on the facts and in the circumstances of the case, has not the appellate tribunal gone wrong in holding that the revision petitioner is not entitled to input tax credit, when the original purchase bill evidencing tax collection is available with the revision petitioner?

(vii) Has not the appellate Tribunal failed to take note of the fact that no circumstances warranting the levy of penalty at one and half times the tax exists?

3. The questions of law raised as 1, 2 and 5 are with respect to the alleged unaccounted sales and purchase suppression detected on inspection. Question No.3 relates to an assumed repetition of particular bill. Question No.4 is with respect to the apportionment of the suppressed turn over as against the goods for which tax was leviable at 4% and 12.5%. All these questions according to us does not amount to a question of law and are in the realm of facts. The unaccounted sales and the purchase suppression were detected on an actual inspection of the business premises of the assessee. The same was detected from a parallel account maintained by the assessee. The contention that the purchase suppression was the very same goods the sales of which was suppressed was specifically dealt with by the authorities below. It was found that the verification of the transaction does not support the above contention of the assessee. In fact the Assessing Officer has found that this reveals the contumacious conduct of the assessee "in indulging" "in willful" suppression of sales and purchase. The repetition of a particular bill has been found to be not correct especially looking in to the cash receipt from the dealer on whom such invoices were raised. The apportionment of goods between 4% and 12.5% items, though denied by the Assessing Officer was permitted by the first Appellate Authority on a proportion of 50% each. Since there is absolutely no question of law arising out of the above issues we decline to answer the above questions and confirm the orders of the lower authorities with respect to the factual findings entered into by the authorities below. We did not think the lower authorities have made any perverse findings on facts. The sixth question of law raised by the assessee deals with input tax credit with respect to the suppressed purchase turn over on a bill to bill basis wherever there is evidence that tax was collected on such sales. As noticed above, admittedly, these purchases were not reflected in the books of accounts. The assessee practically admits that they were suppressed. The Division Bench of this Court has in 2012 (3) KLT SN17(C.No.19) Mohammed Haji V State of Kerala held that input tax credit cannot be granted when the purchases are not reflected in the books of accounts. Hence, the said question has to be answered against the assessee and in favour of the Revenue. The last question raised is essentially one regarding the propriety of the Tribunal to have confirmed the penalty to one and half times the tax sought to be evaded. Normally, we would not have interfered with the same. However, in the facts and circumstances of the case we are of the opinion that the penalty can be confined

to the actual tax sought to be evaded. The above revision hence is partly allowed confirming the orders of the lower authorities but only modifying quantum of penalty to the extend indicated above.