
(2012) 11 KL CK 0242

In the High Court Of Kerala

Case No : O.T. Rev. No. 114 of 2012 (Arising out of T. A. V. A. T. No. 1324 of 2011 of Kerala Value Added Tax Appellate Tribunal, Emakulam)

Tomy Eapen

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Citation : (2013) 1 KHC 135

Hon'ble Judges : Mr. K.M. Joseph and Mr. K. Harilal, JJ.

Bench : Division Bench

Advocate : Bobby John, Government Pleader, for the Respondent; Aji V. Dev and Sushanth J, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

K.M. Joseph, J. - The petitioner calls in question the order passed by the Appellate Tribunal under Kerala Value Added Tax Act (hereinafter referred to as "the Act"). By the impugned order, the Tribunal has dismissed the appeal filed by the appellant impugning the order passed by the Deputy Commissioner (Appeals) Commercial Tax, Kollam confirming the order of the intelligence Officer whereby the Intelligence Officer collected compounding fee of two lakhs separately from the appellant.

2. The Intelligence Officers attached to squad Nos. 2 and 5 had collected compounding fee of Rs.2 Lakhs each from the petitioner in lieu of the prosecution. The petitioner is a dealer in gold. He is having two business premises at Pala. He started his business in September, 2007 with Head Office and Branch. Both the Head Office and Branch are located in Pala. On 24/01/2008 the Intelligence Wing had conducted surprise inspection all the above business place. According to the petitioner it is under threat and persuasion and mostly due to ignorance, the revision petitioner was forced to compound the separately for the Head Office and Branch resulting in the petitioner paying Rupees two lakhs each for Head Office and Branch.

3. According to petitioner, under the Act, only maximum amount of Rs.2 Lakh could have been collected from the petitioner in respect of both the Head Office and the Branch. He would also submit that the practise which has been followed hitherto in the state is that only a maximum of Rs.2 Lakhs is collected even when offences are detected in Head Office and a branch. He would submit that the petitioner is being discriminated against.

4. Per contra, learned Government Pleader would submit that order of the Tribunal does not call for any interference. He would submit that for compounding in respect of each offences a maximum compounding fee of Rs.2 Lakhs has been provided and Intelligence Officer has only applied the law correctly.

5. The questions of law purported to be raised are as follows:

a) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law, in taking the view that the compounding fee under Section 74 of the Act can be collected from a person in respect of his head office and branches separately during a year while the prevailing law and common practise of the Department is otherwise?

b) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in confirming the action of the authorities who initiated two proceedings against a dealer under Section 74 of the Act in respect of his Head Office and Branch in a year, while final assessment was completed in a single order?

c) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is erred in not following the dictum laid down by this Hon''ble Court in 2006 STC 241(143) and by the Hon''ble High Court of AP in 2000 (270) STC 117 (AP).

d) Is not the order of the Tribunal erroneous and perverse on the facts and circumstances of the case?

6. In order to appreciate the contentions raised by the petitioner and the learned Government Pleader, it is necessary to advert to the relevant provisions contained in the Act. Section 74 of the Act provides for composition of offence. It reads as follows:

"74. Composition of offences - (1) The assessing authority or other officer or authority authorised by the Government in this behalf may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, [other than those specified under clause (e) of subsection (1) or clauses (b), (c) or (d) of sub-section (2) of Section 71] by way of compounding of such offences,-

(a) where the offence consists of the evasion of any tax payable under this Act, in addition to the tax so payable a sum of money equal to the amount of tax so

payable subject to a minimum of rupees five hundred and maximum of rupees eight lakhs; and:

[Provided that the maximum compounding fee collect able against a single offence spread over several return periods in a financial year shall be two lakhs rupees.]

(b) in other cases, a sum of money not exceeding ten thousand rupees:

Provided that the Commissioner may by order authorise any officer to compound the offence under this section on payment of a reduced amount.

(2) On payment of such amount under sub-section (1), no further [penal or prosecution] proceedings shall be taken against such person, in respect of that offence."

7. The learned Government Pleader draw our attention to Rule 58(3) of the rules made under the Act. It reads as follows:

"58. Maintenance and preservation of accounts.-

(3) Every registered dealer, every dealer liable to get himself registered under the Act and every other dealer who is required so to do by the assessing authority shall keep the books of accounts, in the case of a registered dealer, at the place or places of business entered in the certificate of registration and in the case of others at the place where the dealer carries on his business. Every purchase and every sale shall be brought to account as soon as the purchase or sale, as the case may be, is effected. [Every contractor, including a contractor who has opted for payments of tax at compounded rate, shall keep the books of accounts relating to each contract at the work site]."

8. The petitioner, no doubt is a proprietor of the establishments with a Head Office and the Branch. Two separate Intelligence Squads conducted inspection, namely, squad No. 2 and 5. The suppressed turnover which was detected in the first case was Rs.1,63,06,390/- with tax effect of Rs.6,52,256/-. The other Intelligence Squad detected suppression to a sum of Rs.51,76,384.50 with tax effect of Rs.2,07,055/-. It is in respect of these suppression"s that the petitioner had sought compounding and compounding fee of Rs.2 Lakhs each was collected from the petitioner.

9. Section 74 empowers the Assessing Officer to accept from a person compounding amount who committed or is reasonably suspected to have committed an offence against the Act except certain offences which are specified therein. It is relevant to bear in mind the proviso wherein maximum of Rs.2 Lakhs is indicated. The proviso declares that maximum compounding fee collected in respect of a single offence which is spread over several return periods in a financial year shall be Two lakhs Rupees. We would have to considers as to whether the petitioner was sought to be prosecuted in respect of a single offence or more than one offence. Suppression was detected both in the Head

Office and in the branch. They constitute separate offences for which the petitioner could have been prosecuted. It is therefore that the petitioner sought compounding. When the petitioner sought compounding and compounding was accepted the result would be that there would be no prosecution or penal action in respect of the two separate offences. When thus petitioner seeks shelter under Section 74 and gets the benefit of compounding, he seeks compounding in respect of two offences. The maximum limit of Rupees Two Lakhs indicated in Section 74 is in respect of each offence. Therefore, the mere fact that petitioner is the owner of both the Head office and also the Branch would be irrelevant. What is relevant is number of offences which are alleged against him. Since there are more than one offence and in fact two offences, the decision of the Intelligence Officer in collecting Rupees Four Lakhs on the supposition that two offences have been committed by the petitioner cannot at all be faulted.

10. Learned Government Pleader is right in drawing our attention to Rule 58(3) which we have adverted to. The law mandates separate accounts to be maintained in each place of business. The offence in this case have been noted in respect of both the Head Office and Branch as already referred. The amounts involved are also different. Therefore we are of the view that the concurrent view taken by the Intelligence Officer and the Appellate Tribunal do not suffer from any legal blemish.

11. The decision which has been adverted to in the question of law contemplated a situation where compounding fee in excess of what could have been collected was collected. The argument that excess compounding fee was collected in this case is rested on the provisions of Section 74 and that Section 74 contemplates collecting only maximum amount of Rupees Two Lakhs when offence is alleged against Head Office and one Branch. We have already rejected that contention.

12. We are equally unable to countenance the argument of the learned counsel for the petitioner that practise which is being followed by the Department hitherto is that only a maximum of Rupees Two Lakhs is collected in a case where offence is committed in the Head Office and one Branch. The practise which is contrary to the clear provisions of the Act cannot be set up in a revision filed purportedly raising questions of law. As far as legal position is concerned, we are duty bound to declare the law, as we find embedded in the relevant provision. The practise allegedly followed in the Department so far cannot certainly form the basis for interpreting the provisions of Section 74, as we find that there is no room for any ambiguity. Therefore, we are of the clear view that there is no merit in the contentions raised before us. Consequently we dismiss the petition and answer the questions raised against the petitioner.