
(2004) 02 KL CK 0035
In the High Court Of Kerala
Case No : T.R.C. No. 110 of 2003

Varnana Jewellery

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17

Citation : (2004) 2 KLT 259

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : S.K. Devi, M. Raj Mohan, Santhosh P. Abraham, Frankur D. Jayan, Deepsur D. Jayan, K.P. Pradeep Payyannur, Shanmugham D. Jayan and P.K. Maya Devi, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Judgement

G. Sivarajan, J.—The assessee is the revision petitioner and revenue is the respondent. The assessment year concerned is 1993-94. The assessee is a jeweller having main business place at Kunnamkulam and a branch at Kozhikode. There was an inspection of the main business place at Kunnamkulam on 2.6.1993 and inspection of the branch at Kozhikode on 21.2.1994. In the inspection conducted at the main business place it was found that the actual new gold ornaments available were 1557.300 grams and silver ornaments were 1627.500 grams. Two business slips were also recovered. Subsequent verification of the books of accounts with reference to the F.I.R. revealed shortage of 4.750 grams of new gold ornaments and excess quantity of 45.150 grams of silver ornaments. The seized slips also revealed unaccounted sales of gold ornaments of 17.200 grams. The inspection conducted in the branch showed the quantity of new gold ornaments at 11350.250 and old gold at 71.00 grams. Subsequent scrutiny of the books of accounts with reference to the F.I.R. revealed a shortage of 5.705 grams of new gold ornaments. The purchase turnover was worked out at Rs. 29,847.40. Based on these discrepancies in the account, the assessing authority proposed to reject the books of accounts and to estimate the turn over

by adopting the running stock method. After considering the objections filed by the assessee that the stock variation found at the time of inspection was very negligible, the assessing authority completed the assessment as proposed and estimated the taxable turnover at Rs. 31,62,610/-. For arriving at this figure the assessing authority has taken the average running stock and added 90% of the same towards purchase turnover estimated. In appeal by the assessee, the 1st appellate authority confirmed the said assessment. In further appeal by the assessee, the Tribunal, while upholding the rejection of accounts, modified the estimate by directing the assessing authority to estimate the turnover by adopting 1/2 times the average running stock and by adding corresponding purchase turnover. Being aggrieved by the order of the Tribunal, the assessee is in revision before this Court.

2. Learned counsel appearing for the assessee submits that though inspections were conducted in the main business place and in the branch, the inspecting authority could find only very negligible stock variation in gold ornaments, and therefore, the estimation of turnover on the basis of running stock is highly illegal.

3. Government Pleader appearing for the respondent, on the other hand, submitted that the assessing authority and the two appellate authorities were perfectly justified in adopting the running stock method and the Tribunal was justified in sustaining the estimate at 1/2 times the average running stock.

4. We have considered the rival submissions. The stock variation found based on the two inspections conducted by the Salestax department was shortage of 4.750 grams of new gold ornaments in the main business premises, besides the unaccounted sales of gold ornaments revealed from the two slips of 17.200 grams; and shortage of 5.705 grains of new gold ornaments at the branch. This is besides the difference in stock (excess) of silver ornaments found in the main business premises. No other discrepancies are seen noted by the assessing authority. It is on the basis of these discrepancies the assessing authority rejected the books of accounts and resorted to estimation of turnover by adopting the running stock method. The average running stock of the business came to Rs. 25,27,725/-, The assessing authority has adopted that amount and added a sum of Rs. 22,74,952.50, being 90% of the average running stock, towards purchase turnover. The taxable turnover came to 31,62,610/- as against Rs. 8,43,998 returned by the assessee. Though the first appellate authority dismissed the appeal filed by the assessee, the Tribunal has modified the estimate by reducing it to half the taxable turnover fixed by the assessing authority. The taxable turnover thus fixed came to Rs. 15,81,305/-. This shows an addition of 7,37,307/- to the returned turnover. The question to be considered is as to whether this addition has got any nexus to the actual suppression found. The value of the unaccounted transaction would approximately work out to Rs. 10,000/-. From the seized two slips it would appear that the assessee has effected other unaccounted sales besides the presumption from the shortage. In

C. Kunhikannan v. State of Kerala (1996 KLJ 97 we find that the assessing authority, on the basis of stock variation of 0.300 grams of new gold and shortage of 0.150 grams of old gold, as also four new gold ornaments found at the inspection of the shop on 18.11.1986, besides a deficit of 92.400 grams of silver, and on the basis of the compounding proceedings, resorted to the estimation of the turnover by adopting running stock method. The adoption of running stock method was confirmed by the Tribunal. However, this Court, after considering the various decisions of the Supreme Court and of this court, observed that though this Court had in certain decisions confirmed the determination of turnover on the basis of running stock, that is not to say that the estimate at a certain number of times of the average running stock is the only method of estimating the turnover in relation to a jewellery. It was further observed that such estimation is only one of the methods which could be adopted in appropriate cases and in appropriate circumstances. The Court further observed as follows:

"The turnover of a dealer will depend on various circumstances-the place where his business is situate, capital employed by him in the business, popularity enjoyed by him, the variety of ornaments that he offers and various other. The estimation necessarily depends upon the facts of each case. The running stock method, though permitted cannot be applied as a flat rule of thumb in each and every case of rejection of accounts and estimation of turnover. The estimate must be related to the facts of the case. There is nothing stated in the orders of the authorities below as to why the average running stock method is the proper mode of estimating the turnover in these cases except that the petitioner's shop is situated in an important centre in Thaliparamba. But that itself will not justify the adoption of this method in the absence of any other material. It will be seen that the discrepancies noted are not so substantial or material as to entail such huge increase in turnover from the returned turnover as done under the assessments in question. Since the estimate has to be on material and on evidence, if the adoption of the average running stock method will result in an addition far in excess of the materials disclosed that method cannot be applied. The authorities were not therefore justified in adopting the average running stock method in the cases in question. That has resulted in additions far in excess of what is supported by the materials available with the officer."

5. According to us, the principles laid down by the Division Bench in that case has not been properly understood by the authorities and the Tribunal while adopting the running stock method. We also find that none of these authorities have considered the relevant matters which are stated by the Division Bench in the above quoted passage. No reasons have been stated by any of these authorities as to why running stock method is the only method to be adopted in the present case. Besides the above, as observed by the Division Bench, the most important thing to be found is as to whether the addition sustained has got reasonable nexus with the material found on inspection.

6. Though the Government Pleader relied on the decisions which are relied on by the first appellate authority, after perusing the said Judgments we feel that all those decisions are mostly concerned with the number of times the running stock to be adopted once the method of estimating the turnover based on running stock method is adopted. According to us, the decision that applies on the facts of this case is C. Kunhikannan's case, which we have discussed earlier.

7. As we have already noted, the materials available in this case are the small stock variation of new gold ornaments found at the time of inspection and the two, slips, which revealed unaccounted sales of 17.200 grams of gold ornaments. According to us, these circumstances by itself will not justify the assessing authority to have resort to the running stock method for estimating the turnover. The assessing authority failed to note that there are other methods of estimation when the books of accounts are rejected, viz. addition based on actual suppression found and also by making ad hoc addition based on the discrepancies found either on the basis of the inspection of the business place or on the basis of discrepancies found on the verification of books of accounts and other documents. Considering the fact that apart from the stock variation found and the unaccounted sales revealed from the two seized slips, there are no other material available on record, which enable the assessing authority to estimate the turnover by adopting running stock method. According to us, this is a case in which the assessing authority should have adopted either of the other two methods available for estimation of the turnover.

8. In the instant case, having considered the materials on record, we are of the view that taking into account all these materials an ad hoc addition of Rs. three lakhs to the returned turnover, which will take care of the corresponding purchase turnover also, would meet the ends of justice. We, accordingly, in modification of the orders of the assessing authority and the Tribunal, direct the assessing authority to modify the assessment by making an addition of rupees three lakhs to the returned turnover. No separate addition need be made towards the corresponding purchase turnover.

The T.R.C. is allowed as above.