(2011) 07 KL CK 0026

In the High Court Of Kerala

Case No : O.T. Rev. No. 76 of 2010

Venus Marketing — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 11(1), 11(4), 42, 6, 6(1)

Citation : (2012) 51 VST 377

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : R. Ramadas, for the Appellant; Mohammed Rafeeq, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The short question raised in the revision case filed by the assessee is whether the Tribunal was justified in confirming disallowance of input-tax credit claimed by the assessee for the year 2005-06 u/s 11(1) of the Kerala Value Added Tax Act, 2003 (hereinafter called, "the Act"). We have heard counsel for the petitioner and the Government Pleader appearing for the State. The VAT regime was introduced in the State from 2005-06 onwards. Registered dealers paying tax u/s 6(1) of the Act on the sale of goods at the rates prescribed in the various Schedules to the Act are entitled to claim input-tax credit based on purchase bills as provided u/s 11(1) of the Act. However, section 6(5) of the Act provides that those registered dealers with turnover below Rs. 50 lakhs in an year are entitled to remit tax at 0.5 per cent (half per cent) of the turnover. However, the dealers paying presumptive tax u/s 6(5) are not entitled to claim input-tax credit on the purchases by virtue of prohibition contained u/s 11(4) of the Act. The assessee claimed that their turnover during the year 2005-06 will be less than Rs. 50 lakhs and based on the said premises they started paying presumptive tax at 0.5 per cent (half per cent) of the turnover for the year 2005-06. The total turnover declared in the returns filed was only Rs. 44 lakhs. However, Department conducted inspection in the succeeding year on March 22, 2007 during which they noticed massive suppression of purchase and sales practised by the petitioner. Consequent upon the detection of unaccounted sales, the petitioner paid compounding fee of Rs. 2 lakhs and avoided penalty. Further, the petitioner filed a revised return for 2005-06 declaring a turnover of Rs. 82.94 lakhs as against the turnover of Rs. 44 lakhs declared in the original return. In other words, search and detection of unaccounted sales in the year 2007 led to disclosure of almost double the amount of turnover conceded in the year 2005-06. Even though the assessment for 2005-06 was made by making further addition over and above the revised turnover declared by the petitioner after search, in the course of appeals the additions were deleted, but the assessment was sustained based on the revised return filed by the petitioner, i.e., on the turnover of Rs. 82.94 lakhs as against Rs. 44 lakhs originally declared. In the assessment so completed, the assessing officer disallowed the petitioner''s claim for input-tax credit u/s 11(1) of the Act. The assessee failed in the two level appeals to get input-tax credit and consequentiy this revision is filed before us against the order of the Tribunal.

2. As already stated above, input-tax credit u/s 11(1) is available to only registered dealers paying tax u/s 6(1) of the Act which provides for payment of tax at the rates provided under various Schedules to the Act. The petitioner admittedly remitted presumptive tax only u/s 6(5) of the Act at 0.5 per cent (half per cent) and by virtue of section 11(4), the petitioner was not entitled to input-tax credit. However, the question to be considered is whether input-tax credit can be claimed after detection of suppressed sales and consequent assessment made at the Schedule rate as against the presumptive tax paid by the petitioner. The petitioner''s case is that once the assessment is made at the Schedule rate, the petitioner becomes liable for payment of tax u/s 6(1) and so much so, the petitioner is entitled to input-tax credit. The Government Pleader on the other hand submitted that the petitioner being a registered dealer paying tax u/s 6(5) can be granted the benefit of input-tax credit only in accordance with the Rules and only if the petitioner complies with the formalities. The relevant Rules in this regard, namely, rule 12(7) and (8) are extracted hereunder for easy reference :

12. Determination of input-tax credit in respect of opening stock.-(1) to (6)...

(7) Where a dealer who had opted for payment of tax under subsection (5) of section 6 or u/s 8 changes over to the payment of tax under sub-section (1) of section 6, he shall submit an application in form No. 25A along with a stock inventory on the date of change over, duly certified by a chartered accountant or a cost accountant, where the dealer is covered by the provisions of section 42, and a statement of the purchase bills issued by registered dealers paying tax under sub-section (1) of section 6, within fifteen days from the ''date of change over.

(8) Where the dealer referred to in sub-rule (7) or in sub-rule (7A) has submitted the statements as required by the said sub-rule, the assessing authority shall verify the claim and, where it is satisfied that the claim is in order, permit the dealer to claim input-tax credit in respect of such goods held as opening stock in

three equal monthly instalments commencing from the return period subsequent to the date of order allowing such input-tax credit.

3. What is clear from rule 12(7) is that a dealer paying presumptive tax should furnish form No. 25A along with stock inventory on the date of change over and a statement of purchase bills issued by registered dealers paying tax u/s 6(1) within 15 days from the date of change over. If the dealer is covered by compulsory audit, the dealer''s application in form No. 25A should be certified by a chartered accountant or cost accountant. What sub-rule (8) says is that the assessing officer is bound to scrutinise documents submitted as above and if he is satisfied that the claim made is in order, he should permit the dealer to claim input-tax credit in respect of such goods held as opening stock in three equal monthly instalments. Admittedly the petitioner has not done any of these because the petitioner neither conceded the date on which the turnover crossed Rs. 50 lakhs making him liable for payment of tax u/s 6(1) nor did he submit form No. 25A or statement of purchase bills as required under sub-rule (7). So much so, the assessing officer had no occasion to pass orders under sub-rule (8) of rule 12 granting facility to the petitioner to claim input-tax credit on the opening stock held by him. The next question to be considered is whether the compliance of sub-rules (7) and (8) of rule 12 as stated above is mandatory to get input-tax credit on the opening stock held. Under the abovestated procedure of the Act and Rules, for a dealer who changes over from scheme of payment of presumptive tax u/s 6(5) to payment of tax under, section 6(1), eligibility for input-tax credit is on the opening stock held on the date of such switch over. In this case it is not even known as to which date the petitioner had crossed Rs. 50 lakhs limit during 2005-06. The contention of counsel for the petitioner is that the petitioner is entitled to input-tax credit for the year as a whole as the entire turnover is assessed at the Schedule rate. We are unable to accept this contention because the petitioner who was paying presumptive tax u/s 6(5) has to necessarily follow the procedure prescribed under rule 12(7) by furnishing form No. 25A along with statement of purchase bills for change, over to the scheme of payment of tax u/s 6(1). In order to avail of the benefit, the petitioner has to get permission from the officer who grants it under sub-rule (8) on being satisfied after verifying form 25A and the accounts furnished. In the absence of compliance of statutory formalities provided in the above Rules, the petitioner was rightly declined input tax credit. So far as the petitioner''s contention that the petitioner is entitled to input-tax credit u/s 11(1) by virtue of assessment of the entire turnover for 2005-06 at Schedule rate is concerned, we do not think the contention is acceptable because under rule 12(8) there is no provision to grant input-tax credit to dealers claiming benefit u/s 6(5) for any period prior to filing of form No. 25A even in cases where the dealer was denied the benefit claimed u/s 6(5) and assessed u/s 6(1) of the Act for the whole year. We are further of the view that the benefits like input-tax credit should be made available to dealers conforming to statutory provisions in regard to maintenance of accounts, filing of returns and remittance of tax and eligibility for input-tax

credit is not a matter to be considered when suppression is detected. The Department should be slow to grant concessions and benefits like input-tax credit for dealers who are involved in tax evasion and benefit should be given strictly in accordance with the provisions of the Act and Rules. We, therefore, dismiss the revision case.

