

(2012) 08 AHC CK 0207

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition (Tax) No"s. 1496, 1187, 1223, 1460, 1461, 1462, 1506, 1517, 1518, 1519, 1520, 1758, 1815 of 2011, 280, 350, 412, 420, 463, 464, 476, 493, 494, 504, 507, 528, 545, 546, 568, 579, 587, 589, 601, 617, 667, 634, 643, 763, 79

Builders Association of India and
another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: Aug. 6, 2012

Acts Referred:

- Central Sales Tax Act, 1956 - Section 14, 15, 3, 4, 5
- Constitution of India, 1950 - Article 14, 286, 366, 366(29A), 366(29A)(b)
- Uttar Pradesh Value Added Tax Act, 2008 - Section 2(ac), 3, 6, 6(1), 7(7)

Citation: (2012) 10 ADJ 333 : (2013) 64 VST 160

Hon'ble Judges: Sunil Ambwani, J; Aditya Nath Mittal, J

Bench: Division Bench

Advocate: Nitin Kesarwani, Kunwar Saksena, N.C. Gupta, Vishwajeet and Yogesh Agarwal, for the Appellant; S.P. Kesarwani, C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

1. We have heard Shri Kunwar Saksena, Shri N.C. Gupta, Shri Vishwajeet and Shri Yogesh Agarwal for the petitioners. Shri S.P. Kesarwani, Additional Chief Standing Counsel appears for the State respondents. The petitioner No. 1, in Writ Tax No. 1496, which is the leading writ petition in this bunch of cases, is an association of builders (Builders Association of India (U.P. Centre)) represented by Shri Dharmesh Chandra Awasthi. The petitioner No. 2 in this writ petition, and all other petitioners in the connected writ petitions are construction companies engaged in execution of civil works contracts. The petitioners execute civil works under contracts with the Government, Semi Government and other Public Sector Companies and Organizations. The works contract executed by them include construction and fabrications of buildings, roads and other civil structures.

2. The Constitution (Forty Sixth Amendment) Act, 1983 inserted vide Section-4, the Clause (29-A) in Article 366 of the Constitution so as to enable the State Legislatures to impose tax on sale or purchase of goods which includes the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The State Legislature can tax (a) on the transfer, or otherwise than in pursuance of a contract, of property in any good, for cash deferred payment or other valuable consideration; (b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in execution of works contract; (c) a tax on the delivery of goods in hire-purchase; (d) a tax on the transfer of right to use any goods for any purpose (whether or not for a specified period); (e) a tax on the supply of goods by any unincorporated association or body of persons to a member; (f) a tax on the supply, by way of a part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drinks, (whether or not intoxicating), and such transfer delivery or supply shall be deemed to be sale of those goods. The validity of the Forty Sixth Amendment was upheld in [Builders Association of India and Others Vs. Union of India \(UOI\) and Others](#) . The Supreme Court declared, that the sales tax laws passed by the Legislatures of State levying taxes on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause or sub-clause of Article 286 of the Constitution. Whatever might be the situational differences of individual cases, the constitutional limits, on the taxing power of the State are applicable to works contract represented by building contracts, in the context of the expanded concept of tax on the "sale or purchase of goods" as constitutionally defined under Article 366(29-A) would apply to other species of works contract with the situational modification.

3. In [Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others](#) , the Supreme Court laid down the limitations on the State Legislatures for enacting such laws. Some of these limitations are that while imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is not competent to impose a tax on such a transfer (deemed sale) which constitutes a sale in the course of inter-State trade or commerce or a sale outside the State or a sale in the course of import or export. The provisions of the Central Sales Tax Act, 1956 are applicable to a transfer of property in goods involved in the execution of a works contract; while defining the expression "sale" it is open to the State Legislature to fix the situs of a deemed sale, but it is not permissible for the State Legislature to define the expression "sale" in a way as to bring within the ambit of the taxing power a sale in the course of inter-State trade or commerce, or a sale outside the State or a sale in the course of import or export; the tax is imposed on the transfer of property in goods involved in the execution of a works contract, and the value of the goods would constitute the measure for imposition of the tax. The value of the goods can be arrived at by deducting

expenses incurred by the contractor for providing labour and other services from the value of the works contract; the labour and service charges in works contract would cover labour charges, amount paid to a subcontractor, charges for obtaining on hire machinery and tools, charges for planning, designing and architect's fees, cost of consumables used in execution of works contract, cost of establishment of the contractor to the extent it is relatable to supply of labour and services, other similar expenses relatable to supply of labour and services and profit earned by the contractor to the extent it is relatable to the supply of labour and services. The Apex Court in Gannon Dunkerley and Co. State of Rajasthan (supra) laid down the following guidelines to deal with the cases where the contractor does not maintain the proper accounts and making it permissible to the State legislature to fix a uniform rate of tax for the various goods involved in the execution of a works contract. The Supreme Court observed in paragraph-51 as follows :

51. The aforesaid discussion leads to the following conclusions:

- (1) In exercise of its legislative power to impose tax on sale or purchase of goods under Entry 54 of the State List read with Article 366(29-A)(b), the State Legislature, while imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is not competent to impose a tax on such a transfer (deemed sale) which constitutes a sale, in the course of inter-State trade or commerce or a sale outside the State or a sale in the course of import or export.
- (2) The provisions of Sections 3, 4 and 5 and Sections 14 and 15 of the Central Sales Tax Act, 1956 are applicable to a transfer of property in goods involved in the execution of a works contract converted by Article 366(29-A)(b).
- (3) While defining the expression "sale" in the sales tax legislation it is open to the State Legislature to fix the situs of a deemed sale resulting from a transfer falling within the ambit of Article 366(29-A)(b) but it is not permissible for the State Legislature to define the expression "sale" in way as to bring within the ambit of the taxing power a sale in the course of inter-State trade or commerce, or a sale outside the State or a sale in the course of import and export.
- (4) The tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract falling within the ambit of Article 366(29-A)(b) is leviable on the goods involved in the execution of a works contract and the value of the goods which are involved in execution of the works contract would constitute them for imposition of the tax.
- (5) In order to determine the value of the goods which are involved in the execution of a works contract for the purpose of levying the tax referred to in Article 366(29-A)(b), it is permissible to take the value of the works contract as the basis and the value of the goods involved in the execution of the works contract can be arrived at by deducting expenses incurred by the contractor for providing labour

and other service form the value of the works contract.

(6) The charges for labour and services which are required to be deducted from the value of the works contract would cover (i) labour charges for execution of the works, (ii) amount paid to a sub-contractor for labour and services; (Hi) charges for obtaining on otherwise machinery and tools use for execution of the works contract; (iv) charges for planning, designing and architect" s fees; and (v) cost of consumables used in execution of the works contract; (iv) cost of establishment of the contractor to the extent it is relatable to supply of labour and service; (vii) other similar expenses relatable to supply of labour and service; and (viii) profit earned by the contractor to the extent it is relatable to supply of labour and service.

(7) To deal with cases where the contractor does not maintain proper accounts or the account books produced by him are not found worthy of credence by the assessing authority the legislature may prescribe a formula for deduction of cost of labour and services on the basis, of a percentage of the value of the works contract but while doing so it has to be ensured that the amount deductible under such formula does not differ appreciably from the expenses for labour and services that would be incurred in normal circumstances in respect of that particular type of works contract.

It would be permissible for the legislature to prescribe varying scales for deduction on account of cost of labour and services for various types of works contract.

(8) While fixing the rate of tax it is permissible to fix a uniform rate of tax for the various goods involved in the execution of a works contract which rate may be different from the rates of tax fixed respect of sales or purchases of those goods as a separate article.

4. Section 3 of the U.P. Value Added Tax Act, 2008 (in short, "the Act) provides for incidence and levy of tax. Every dealer is liable to pay tax for each assessment year on his taxable turnover of sales or purchases or both of taxable goods at prescribed rate of tax. u/s 2(ac), the term of sale meant any transfer of property in goods by one person to another for cash or valuable consideration and includes inter alia, a transfer of property in goods involved in the execution of the works contract.

5. Section 6 of the Act provides for composition of tax liability as follows :

6. Composition of tax liability.--(1) Notwithstanding anything contained in any other provision of this Act, but subject to other provisions of this section and the directions of the State Government, the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on his turnover of sale in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon:

Provided that in the case of a dealer not being a dealer executing works contract, who carries on exclusive business of re-sale of goods within the State after their

purchase from a registered dealer within the State and whose turnover of sale of such goods, for any assessment year, does not exceed fifty lakh rupees or his turnover, for the assessment year preceding that assessment year, has not exceeded fifty lakh rupees, the State Government may notify a rate percent on sale of such goods. Different rates may be notified for different goods:

Provided further that any change in the rate of tax which may come into force after the date of such agreement shall have the effect of making a proportionate change in the lump sum or the rate agreed upon in relation to that part of the period of assessment during which the changed rate remains in force.

6. The U.P. Value Added Tax Act, 2008 came into effect from 1.1.2008. Prior to its enforcement, Section 3 and Section 7-D of the U.P. Trade Tax Act provided for similar levy of tax and composition.

7. The State Government published a composition scheme for civil works contractors u/s 6 of the Act on 9.6.2009 effective from 1.1.2008 (2007-08), to subsequent years. The Scheme that where the goods imported from outside the State of U.P. and used in the execution of the works contract in a financial year do not exceed 5% of the contract value where the contractors use the imported goods for more than 5% of the value the compounding is provided at 6%. Para-5 of the Scheme provided that the scheme is being introduced for the 2007-08 (from 1.1.2008 to 31.3.2008) as also for the subsequent years. It would not be permissible for contractor to select only few of the contracts or part of a contract for composition scheme.

8. The scheme further stipulates that if the composition scheme was opted for one of the years, it would be compulsory on the part of the contractor to opt for the scheme for all subsequent years. Para-7 stipulated that once option for the scheme was exercised, the contractor would not be permitted to opt out of the scheme. Para-18 of the scheme provides that it would not be necessary for contractor to file separate composition application for contracts obtained in one financial year subsequent to the contracts mentioned in the application filed for any financial year; mere intimation of subsequent contracts furnished within 30 days of obtaining contract would be sufficient.

9. All the petitioners opted for compounding scheme for payment of compounded tax at 2% of the turnover and have been paying tax at such rates.

10. On 30.12.2010 u/s 6(1) of the Act the State Government amended the Compounding Scheme dated 9.6.2009. Clause (a) of para-2 of the scheme was amended to the effect that the rate of tax for those contractors, who have executed works in which the goods imported have been used upto 5% of the total contract, can opt for compounding of tax at 4% of the turnover. Similar amendment was made in respect of the electrical contractors also in clause (a) of para-2. Para-3 of the Government Order dated 30.12.2010 provided that all other conditions for the

dealers, who have given their applications prior to the issuance of the Government Order, will remain the same in accordance with the Government Order dated 9.6.2009.

11. A representation was given by the Chairman of VAT Committee of Builders' Association of India on 17.1.2011 claiming to have more than 10000 members, at its 114 centres, protesting to the increase of the measure of tax from 2% to 4% without giving any opportunity to the association. According to the association, the actual liability is less than 1% for the purchases within the State of U.P. and 2%, if import of materials from outside the State is more than 5%. The association protested that the liability under compounding scheme is more than what it would work out under the normal assessment.

12. A number of writ petitions were filed challenging the Government Order dated 30.12.2000 increasing the measure for compounding tax from 2% to 4%. One of the grounds taken in the writ petition was a rate of compounding of tax applicable to the agreements, which were executed and for which applications were filed for compounding the tax prior to 30.12.2010. On the directions of the Court, the Additional Chief Standing Counsel, High Court requested the State Government to provide clarification on the point.

13. The State Government, by its letter dated 29.4.2011 to Shri S.P. Kesarwani, Additional Chief Standing Counsel, High Court, Allahabad, provided a clarification that in view of clause-18 of the compounding scheme dated 9.6.2009 applicable to civil contractors and electrical contractors, the State Government is empowered to make the changes in the amendment in the rates on which the tax may be compounded. In the Government Order dated 30.12.2010, it has been clearly provided keeping in view the principles of natural justice that in respect of all the applications for compounding of tax made prior to 30.12.2010, all the conditions of compounding will remain the same as these are provided in the Government Order dated 9.6.2009, meaning thereby that no increase has been made in the amount of compounding in respect of the applications, which have been received prior to 9.6.2009.

14. In Writ Tax No. 581 of 2011 (M/s R.K. Associates v. State of U.P. and others), learned Standing Counsel communicated the clarification given by the State Government in its letter dated 29.4.2011, on which the writ petition was disposed of on 2.5.2011 with the following orders :

The petitioner is a civil contractor and had applied on 6th April, 2010 for compounding the tax liability under a scheme u/s 7-D of the U.P. Trade Tax Act, which was granted at the rate of 2 percent for the assessment year 2010-2011. The petitioner has filed the present petition in view of the subsequent Government Order dated 30th December, 2010, apprehending that the petitioner would be liable to pay the composition fee at the rate of 4 percent.

On the last occasion, learned Standing Counsel was required to obtain instructions. Shri S.P. Kesarwani, learned Standing Counsel, on the basis of instructions received by him through communication dated 29th April 2011, informed the Court that the said Government Order shall apply prospectively and shall not apply to the applications filed before the commencement of the Government Order.

In view of aforesaid, we are of the opinion that the cause of action giving rise to this petition does not survive. The writ petition is disposed of accordingly.

However, it shall be open to the petitioner to challenge the said Government Order as and when occasion arises.

15. These writ petitions were filed thereafter being Writ Tax No. 1187 of 2011 (M/s S.T. Advani and Co. v. State of U.P. and others) and Writ Tax No. 1461 of 2011 (M/s V.N. Associates v. State of U.P. and others), and other writ petitions. It was submitted that though the State Government has issued a clarification, that the change in the rate will be applicable from the date, when the Government Order dated 30.12.2010 was issued, the second proviso to sub-section (1) of Section 6 of the Act provides for change in the rate of compounding of tax only, if there is change in the rate of tax. Since the rates of tax has not been increased, and have rather been reduced, the increase in the rate of tax for compounding from 2% to 4% was not permissible in law.

16. In these writ petitions, it is submitted by learned counsels appearing for the petitioners, that the rate of change of compounding of tax is permissible, only if the rate of the tax of goods is changed, and in such case a proportional change in the lump sum of the rate agreed upon in relation to that part of the period of assessment during which the changed rate remains in force, is applicable.

17. It is further submitted that the compounding scheme dated 9.6.2009 is applicable with the condition, that it will not be open for any contractor to opt for compounding scheme only in respect of the some of the contracts; once he has applied for compounding in the year 2007-08, it will be compulsory for him to opt for compounding all contracts in the same year and the subsequent years (clause-5). It is provided in the scheme, that once an option has been given for compounding u/s 6, the contractor will not be allowed to take back his option (clause-7). The scheme provides that after exercising the option for compounding and making an application; it will not be necessary for the contractor to give option for the other contracts; it will be sufficient, if he gives information of such contracts within 30 days to the assessing officer. It is submitted that the combined reading of the conditions of compounding scheme would demonstrate that once an option is given, the compounding scheme will be applicable to all the contracts for all the subsequent years. The petitioners have no option to withdraw from the compounding scheme. They will not be required to make fresh application for compounding in respect of each contract and intimation alone will be sufficient. It is submitted that on these

conditions the increase in the rate of compounding from 2% to 4% is arbitrary, irrational and is violative of Section 6(1), the compounding scheme. The increase is also violative of principles of natural justice.

18. It is submitted that with the increase in the rate of compounding of tax, w.e.f. 30.12.2010, the computation of compounding on the contracts will become unworkable, inasmuch as parts of contract would fall within the composition rate at 2% and the remaining parts after 30.12.2010 will be compounded at 4%.

19. Shri S.P. Kesarwani, appearing for the State, on the other hand, submits that all the apprehensions raised by the petitioners are unfounded. It is open to the State Government u/s 6(1) of the Act to compound the liability of tax on the terms and conditions given in the compounding scheme. The compounding of the tax is by way of contract of payment of tax in lump sum on the value of contract on an agreed rate. The contract of compounding is a statutory contract under a scheme, in which the State Government can increase or decrease the rate of compounding of tax. Section 6 does not prohibit the State Government, which has the legislative powers to increase or decrease the rate of tax as well as to fix the rate of compounding of the tax. The second proviso to Section 6(1) is not applicable to the case inasmuch as it operates independently. If there is any change in the rate of tax on the goods, such increase will proportionally affect the rate of compounding of tax. The second proviso does not restrict the powers of the State Government from increasing or decreasing the rate of compounding of tax, under the Scheme made u/s 6 (1) of the Act.

20. Shri S.P. Kesarwani submits that the compounding of tax under the scheme made u/s 6(1) is in three parts, namely (1) the compounding is subject to other provisions of the section and the directions of the State Government; (2) the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on the turn over of sale in lieu of tax that may be payable by a dealer and (3) for such period as may be agreed upon. The assessing authority may agree to accept the composition amount either in lump sum or at an agreed rate for such period as may be agreed upon. The invitation of offer for compounding is separately for each financial year resulting in an agreement qua such financial year. There is no assurance given to the petitioners by the State Government that the compounding rate shall not be varied for subsequent financial years. The increased rate of compounding from 2% to 4% became applicable on all compounding applications filed on or after 30.12.2010. As per condition No. 5 of the compounding scheme it is compulsory for civil contractors to opt for compounding for subsequent years also in respect of all contracts.

21. In the counter-affidavit of Shri Wahid Ali, Deputy Commissioner, Commercial Tax, Headquarter, U.P. Lucknow, the clarifications issued by the Commissioner, Commercial Tax, Uttar Pradesh dated 25.1.2012 to the Additional Commissioner, Grade-2, Commercial Tax (High Court works) Allahabad has been annexed. In this

clarifications, it is specifically stated that the compounding applications are accepted for a financial year. Separate application is required to be submitted for next financial year. A contractor does not have an option to opt for a few of the contracts. The option has to be exercised for all the contracts in the financial year. According to para-5 of the compounding scheme for the year 2007-08 i.e. w.e.f. 1.1.2008 onwards it will be necessary for the contractors to opt for all the contracts in the subsequent years and that the increased rate of compounding tax will be applicable for all contracts in subsequent years also.

22. It is submitted by Shri S.P. Kesarwani, that under the scheme dated 9.6.2006 the rates of the compounding of tax are provided separately for those contractors, who utilise upto 5% of the imported goods in the State in the contract at the rate at 2% and for those, who use more than 5% of the imported goods the compounded tax is to be paid at the rate of 6%. He submits that it is not correct on the part of the petitioners to submit that the rate is fixed at 2%. The rate is in two slabs, namely at 2% for those, who use upto 5% of the imported goods in the contract and at 6% for those, who use more than 5% of the imported goods in the contract.

23. In dealing with the challenge to the constitutional validity of the provisions of taxing statutes that it violates Article 14 of the Constitution, the Court, which exercises the power of judicial review should be conscious of the limitation of judicial intervention, particularly in matters relating to the legitimacy of economic or fiscal legislation. The Legislature is entitled to a great deal of latitude in fiscal legislation. The Court would interfere only where a clear infraction of constitutional provision is established. In Sardar Baldev Singh Vs. Commissioner of Income Tax, Delhi and Ajmer ; East India Tobacco Co. Vs. State of Andhra Pradesh ; R.K. Garg v. Union of India, (1981) 4 SCC 675; State of M.P. and Others Vs. M/s. Indore Iron and Steel Mills Pvt. Ltd., and Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, the Supreme Court has expressed a note of caution that the burden is all the heavier when the legislation under attack is a taxing statute, since the power of the legislature in classifying objects for the purposes of taxation are wide. The legislatures possess the greatest freedom in classification and the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it. The Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving the statutory provision a strained meaning, or narrower or wider meaning, than what appears on the face of it. It is only when all efforts to do so fail should the Court declare a statute to be unconstitutional.

24. In Bhadoria Gram Seva Sansthan v. Assistant Commissioner, Sales Tax, 2006 UPTC 538, it was held by this Court as follows:

It is the choice of a dealer to opt for compounded payment of tax and if the said choice is in accordance with the scheme and is ultimately accepted by the authority concerned, it becomes an agreed amount of tax. The department as also the dealer

are bound by the said agreement. A dealer who has opted to pay the tax in lump sum u/s 7-D of the Act after it has been accepted by the department, any demand for that period is not relatable to the actual turnover but the sum agreed upon. In other words, the department as well as the dealer both know the amount payable and receivable by each other. The determination of lump sum amount in lieu of tax displaces the requirement of regular assessment proceeding and the quantification of tax liability is by agreement as per the term of the scheme which would bind both the parties. The object of introducing such a scheme under a taxing statute is well established as so many advantages are attached to such scheme besides being hassle free to the dealer.

25. The determination of the lump sum amount in lieu of tax dispenses with the requirement of regular assessment proceedings and the quantification of the tax liability, by agreement as per terms of the scheme. The agreement binds both the parties. The object of introducing such a scheme has many advantages besides being hassle free procedure for the dealers. The scheme provides for measure of compounding of the tax, subject to the taxing powers and discretion of the State Legislature. The State Legislature may provide for a higher rate for compounding of tax. It is within the discretion of the State Government subject to its taxing power to increase or decrease the rate of tax as well as the compounding of tax. The second proviso to Section 6(1) only provides that where the rate of tax on goods increases, the rate of compounded tax will also correspondingly increase. The agreement is subject to Section 6. The second proviso to Section 6(1) does not restrict the State Legislature from exercising its legislative powers of increasing or decreasing the rate of compounded tax. The second proviso operates independently of the powers of the State Legislature in increasing or decreasing the rate of compounded tax, depending upon the increase in the rate of tax of goods by the State.

26. In the present case, it has been clarified by the State Government and on which the previous batch of writ petitions were disposed of, that the increased rate of compounded tax at 4% under the scheme dated 9.6.2009 will be applicable from the date of such increase i.e. 30.12.2010. The petitioners, who had applied for compounding, will not be affected by the increased rate for the period prior to 30.12.2010. They cannot, therefore, take the help of the principle of promissory estoppel, nor can they allege any arbitrariness or discrimination in increasing the rate of compounded tax.

27. The argument raised by learned counsels appearing for the petitioners, that once an option is given, the petitioners cannot opt out of the scheme and will be bound by the increased rate irrespective of the number of contracts entered into by them, is attractive, but is devoid of any substance. The object of the compounding scheme dated 9.6.2009 made u/s 6(1) of the Act is to provide for compounding at a uniform rate of the tax on the turn over, qua the financial year. The Act does not provide for two or more assessments of commercial tax for the same period, in any

financial year; one on a facilitated compounded rate and another by way of regular assessment on the notified rates given in the schedule. The procedure of assessment provided under the Act, restricts the assessment for any period, to only one such assessment. Keeping in view the object of making assessments in a simplified manner without any hassles, an option is provided in the scheme to make applications for compounding of tax for a financial year. Once such an option is exercised, all the contracts entered into either before giving the option or subsequent thereto, for the relevant period covered by the agreement are covered by the compounding scheme. For the subsequent years in case any contract is not completed or the payments are receivable, the same analogy would apply namely that there cannot be two assessments for the same period of time, one on compounded basis and another on regular basis.

28. In Varkisons Engineers Vs. State of Kerala and Another, , the Supreme Court held following Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., ; Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., and Commissioner of Income Tax, West Bengal Vs. Isthmian Steamship Lines, , that the imposition of a different tariff in the mill of the assessment order could be given effect to, if the scheme of the Act provides for proper machinery for computing the tax liability. The Supreme Court also drew distinction between Section 5 of the Kerala General Sales Tax Act, 1963, which deals with normal assessment referring to tax on the turn over, and Section 7(7), which refers to payment of tax on the amount of contract. The matter was remanded to the Kerala High Court for *denovo* consideration in accordance with law.

29. In the present case the petitioners have not raised any question with regard to difficulty in assessment of tax for two periods in the same assessment year. The compounding scheme dated 9.6.2009 does not provide for any such eventuality. A dealer has to opt for compounding of tax on the amount of contract or the contracts as the case may be for the entire financial year. The scheme does not provide for any piecemeal option nor provides for any assessment to be made in the same financial year. The amended rate of compounding of tax is applicable prospectively to the applications filed before the commencement of the increased rates of compounded tax.

30. We do not agree with the submissions of learned counsel appearing for the petitioners, that having applied for compounding, a contractor does not have any option to opt out in any of the subsequent years. In subsequent years, if the applicant is not left with any incomplete contract or a contract in respect of which the payments are receivable, he may not apply for the compounding. In such case, it will be open to the civil contractor or the electrical contractor as the case may be, to make a choice to apply for compounding or subject itself to regular assessments.

31. For the aforesaid reasons, we do not find any merit in the grounds for challenging the amendments dated 30.12.2010, to the rates of compounding by the

Compounding Scheme for compounding of tax by the building contractors dated 9.6.2009, issued by the State Government u/s 6 of the Act. All the writ petitions are consequently dismissed.