S. Valsala Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: Nov. 1, 1993

Citation: (1994) 95 STC 450

Hon'ble Judges: K.S. Paripoornan, J; K.P. Balanarayana Marar, J

Bench: Division Bench

Advocate: N. Muraleedharan Nair, for the Appellant; V.C. James, Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

K.S. Paripoornan, J.
This revision is filed by an assessee under the Kerala General Sales Tax Act. In this revision, she assails the order

passed by the Sales Tax Appellate Tribunal, Additional Bench, Kottayam, dated March 27, 1992 in T.A. No. 266 of 1991. The respondent is the

State. The assessee is a dealer in arrack. We are concerned with the assessment year 1987-88. During the year, the officials of the Sales Tax

Department inspected the business place of the assessee on September 24, 1987 and January 16, 1988. During the first inspection on September

24, 1987, there was an excess of 32 bags of empty bottles. During the second inspection on January 16, 1988, apart from stock discrepancy, the

officials recovered a diary showing daily cash transactions, day book in loose sheets from January 1, 1988 to January 15, 1988, arrack issued

statement from April 3, 1987 to October 9, 1987 and purchase bills for 1987-88. On verification of the said records with the accounts maintained

by the assessee, various irregularities and stock variations were revealed. One important aspect noticed was that there was variation in the stock of

arrack, shortage of 6,530.72 litres. There was no satisfactory explanation for the amounts shown under the caption ""receipt and payment"" in the

diary. The variations and irregularities were admitted and the assessee herself compounded the offence and paid a sum of Rs. 1,00,000 as

compounding fee. The assessing authority noticed that apart from the variations and irregularities found on inspections, the bid amount for Group I

was Rs. 23,22,222 and Group III was Rs. 19,91,000 and the total sales returned was only Rs. 30,23,800, which showed that as per the trading

account, it was a gross loss and there was no explanation therefor. Considering these aspects, the books of account and returns were rejected.

The Sales Tax Officer fixed the total and taxable turnover at Rs. 77,40,550 and Rs. 47,06,750 respectively. He made an addition of Rs.

45,50,700 as against the total suppression detected by the assessing authority (Rs. 8,19,437). In appeal, the Appellate Assistant Commissioner

affirmed the rejection of accounts and held that in estimating the total taxable turnover, the addition should be confined to 1 1/2 times of the sales of

arrack as per accounts. He limited it to 60 per cent of the conceded total turnover. In second appeal, the Appellate Tribunal noticed that the first

appellate authority sustained the suppression at 60 per cent of the conceded total turnover and even that was much. So, the Appellate Tribunal

substituted the addition to 1 1/2 times of the actual suppression detected. The suppression actually detected was Rs. 8,19,437. The addition was a

sum of Rs. 4,09,719. The Appellate Tribunal held that the assessing authority had not established any instance of purchase from outside the State

and no exemption was allowed for the shortages found and, therefore, ordered 80 per cent of the. addition as exempted turnover and gave

exemption to it. In other words, even limiting the addition to 1 1/2 times the suppressed turnover found out, 80 per cent of the sale was given

exemption as not exigible to tax. The appeal filed by the State (T.A. No. 324 of 1991) was dismissed. It is against the common order passed by

the Appellate Tribunal dated March 27, 1992, modifying the quantum in the best judgment assessment the assessee has come up in revision.

2. We heard counsel for the revision petitioner-assessee, Mr. N. Muraleedharan Nair, and also counsel for the respondent-State, Senior

Government Pleader Mr. V.C. James.

3. In this case, during the relevant assessment period, there were two inspections, first one was on September 24, 1987 and the other was on

January 16, 1988. In the first inspection, there was only an excess of 32 bags of empty bottles. In the second inspection, 6,530.72 litres of arrack

was found short in the sales depot. The Revenue initiated proceedings for prosecution. The assessee, compounded the offence departmentally by

paying a sum of Rs. 1,00,000. The assessee, in the detailed submission to the department dated June 30, 1989, admitted the offence and prayed

for compounding the same. The application filed by the assessee is contained at pages 85 to 94 of the files. Accepting the assessee''s offer for

compounding the offence, the Intelligence Officer, Squad II, Ernakulam, passed an order dated July 30, 1989 accepting a sum of Rs. 1,00,000

for. compounding the offence departmentally. The matter was taken up in revision by the assessee before the Deputy Commissioner of Agricultural

Income-lax and Sales Tax, Kottayam, who, by order dated February 28, 1991, affirmed the compounding proceedings and held that the

compounding fee of Rs. 1,00,000 was levied properly. Pages 279 to 283 of the assessment records contain the order passed by the Deputy

Commissioner of Sales Tax. It is evident that the books of accounts and the returns submitted by the assessee were found to be unreliable. It was

held so. The assessing authority added a sum of Rs. 45,50,700 as against the suppression detected in the sum of Rs. 8,19,437. The first appellate

authority sustained the addition to 60 per cent of the total conceded turnover. But in second appeal, the Appellate Tribunal held that the addition of

1 1/2 times of the actual suppression detected will be justified. The Appellate Tribunal found that the assessing authority had not established any

instance of purchase from outside the State. In a case where the rejection of accounts and returns was warranted, the only question is the quantum

of estimate to be made to the returned turnover. As a final fact-finding authority; the Tribunal has limited the addition to 1 1/2 times the suppressed

turnover and exempted 80 per cent of the same. We arc of the view that the estimate sustained by the Appellate Tribunal is only very minimal and

no error in law has been committed by the Appellate Tribunal in sustaining the estimate to 1 1/2 times the suppression detected and in exempting

80 per cent of the addition.

4. The order of the Appellate Tribunal docs not disclose any error of law. We dismiss the tax revision case.