(2014) 09 KL CK 0122

High Court Of Kerala

Case No: WP(C). No. 4847 of 2010 (E)

K.K. Builders — APPELLANT

Vs

Commecial Tax Officer — RESPONDENT

Date of Decision: Sept. 16, 2014

Acts Referred:

- Kerala Value Added Tax Act, 2003 - Section 20(3), 6, 8(b)

Citation: (2014) 4 ILR 519 : (2014) 4 KHC 241 : (2014) 4 KLJ 74 : (2014) 4 KLT 58

Hon'ble Judges: A.K. Jayasankaran Nambiar, J

Bench: Single Bench

Advocate: Harisankar V. Menon and Meera V. Menon, Advocate for the Appellant; Noushad Thottathil, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.

The petitioner is a registered partnership firm engaged in various businesses, including a business in granite metal through the operation of two granite crushing units. The units in question namely, Kottiyoor Metals and K.K. Granite Industry, are said to be located 30 Kms. apart. The former unit employs one primary crusher and two secondary crushers whereas the latter unit employs only one secondary crusher. The issue in the present writ petition involves the construction to be placed on Section 8(b) of the Kerala Value Added Tax Act that deals with payment of tax at compounded rates by dealers producing granite metals with the aid of mechanized crushing machines. The said provision reads as under:

"(b) Any dealer producing granite metals with the aid of mechanized crushing machine may, at his option, instead of paying tax in accordance with the provisions of the said sections, pay tax at the following rates, namely:-

(i) for each crushing machine of size not exceeding 30.48 cm x 22.86 cm = [Rs. 40,000 per annum]

(ii) for the each crushing machine of size exceeding 30.48 cm x 22.86 cm but not exceeding 40.64 cm and 25.40 cm = [1,40,000 per annum]

(iii) for the each crushing machine of size exceeding 40.64 cm x 25.40 cm= [Rs. 2,80,000- per annum.]

(v) for each cone crusher

[Rs. 15,00,000/- per annum]

Provided that in the case of dealers, who opted to pay compounded tax under this clause, no separate assessment shall be made in respect of m-sand produced by them.

[Provided further that notwithstanding anything contained in this clause, dealers with a single crushing machine of size not exceeding 30.48 cm x 22.86 cm shall pay rupees twenty five thousand only per annum and those with a single crushing machine of size above 30.48 cm x 22.86 cm but not exceeding 40.64 cm x 25.40 cm shall pay rupees one lakh only per annum, as tax under this clause.]

[Explanation-for the purpose of this clause, primary crushers shall also be reckoned for the purpose of computation of compounded tax, and the rate applicable to primary crushers shall be at fifty per cent of the aggregate of the tax payable on secondary crushers.]"

2. It is the case of the petitioner that insofar as the 2nd unit namely K.K. Granite Industry employs only one secondary crusher, the tax to be paid by him in respect of the said unit must only be with reference to the amounts prescribed under the Section for secondary crusher and without referring to the secondary crushers that are employed in the other unit namely Kottiyoor Metals. Further, when it comes to the payment of tax in respect of the primary crusher that is employed by the petitioner in Kottiyoor Metals, the computation of tax under Section 8(b) for the primary crusher must be in an amount that represents 50% of the amounts due on the two secondary crushers that are employed in that unit and not with reference to the three secondary crushers that are employed by the petitioner in both the units collectively. It is pointed out by the petitioner that this contention had been accepted by the respondents for the earlier assessment year 2008-2009 and Exts. P2 and P3 orders have been produced in support of the said contention. It is the specific case of the petitioner that when it came to the application of the compounding provision for the assessment year 2009-2010, the respondents took the stand that while computing the liability in respect of the primary crusher in the first unit, the secondary crusher in the second unit would also be reckoned. Exts. P8 and P9 orders of the 1st respondent are passed on the above basis. The petitioner impugns the said orders in the present writ petition. It is further urged that, responding to the stand of the respondents in Exts. P8 and P9 orders, and with a view to avoiding the rigour of Section 8(b) of the Kerala Value Added Tax Act, the

petitioner had approached the 3rd respondent with a request to treat the various places of business of the petitioner as separate units for the purposes of levy, assessment and collection of tax, in terms of Section 20(3) of the Kerala Value Added Tax Act. Ext. P11 is the order passed by the 3rd respondent on the application of the petitioner. The 3rd respondent treated the various places of business of the petitioner as separate units for the purposes of the Act with the exception of the two granite crushing units which he treated as a single unit for the purposes of the Act. The contention of the petitioner while impugning Ext. P11 order of the 3rd respondent is that it was not open to the 3rd respondent to accede to the request of the petitioner for treating these different places of business as separate units in a partial manner and he had either to treat all the places of business as separate units or to reject the request of the petitioner under Section 20(3). It is the further case of the petitioner that if the two Granite crushing units of the petitioner are also treated as separate units for the purposes of Section 20(3) of the Kerala Value Added Tax Act, then the compounding provisions under Section 8(b) of the Act would have to be independently applied to each of the units and on doing so the position that prevailed for the assessment year 2008-2009 would apply for the assessment year 2009-10 also.

3. A counter affidavit has been filed on behalf of the 1st respondent wherein it is pointed out that as per the scheme of payment of tax on compounded rates applicable to Metal Crushing Units, the compounding provisions have to be applied in respect of a dealer and not in respect of a unit. Thus viewed, the separation of units belonging to a single dealer may not be of any consequence when the provisions of Section 8(b) are relied on for the purposes of determining the compounded tax that is to be paid by a dealer. With regard to Ext. P11 order passed by the 3rd respondent, it is pointed out that the 3rd respondent had only exercised a discretion that was vested in him under Section 20(3) and in view of the fact that the petitioner was carrying on the same granite metal business activity in both the units, there was nothing wrong in treating both these units as a single unit for the purposes of the Act.

4. I have heard Sri. Harisankar V. Menon, learned counsel appearing on behalf of the petitioner and also the learned Government Pleader appearing on behalf of the respondents.

5. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that the writ petition must fail. The provisions of Section 8(b) clearly indicate that the facility to pay tax at compounded rates is one that is available, as an option, to a dealer producing granite metals with the aid of mechanized crushing machines. It is optional in the sense that there is nothing preventing a dealer from paying tax, as per the normal method, in terms of Section 6 of the Act. The precondition for payment of tax at compounded rates is that the dealer is obliged to reckon the primary crushers and

the secondary crushers which he employs in the business of producing granite metals while paying tax at the compounded rate. As per the scheme of S. 8 therefore, the mere fact that the petitioner dealer has two separate units with varying numbers of crushers in them will not be of any significance since the computation of tax under the provision is not with reference to the crushers in a unit but with reference to the crushers employed by the dealer in the course of his business. Since the petitioner admittedly has one primary crusher and two secondary crushers in one unit and a third secondary crusher in the second unit, the computation of tax in terms of Section 8(b) of the Kerala Value Added Tax Act must necessarily be by reckoning all the crushers and, consequently, the compounded tax for the primary crusher has necessarily to be at 50% of the aggregate of the tax payable on the three secondary crushers that are employed by the petitioner in the pursuit of his granite metal business. In that view of the matter, I do not find anything illegal in Exts. P8 and P9 orders passed by the 1st respondent. The challenge against the said orders in the writ petition therefore fails.

6. As regards Ext. P11 order passed by the 3rd respondent, I note that the said order has been passed under Section 20(3) of the Kerala Value Added Tax Act. The said provision confers a discretion on the Commissioner who, on an application made by the dealer, may treat each of the places of business of a dealer as a separate unit for the purposes of levy, assessment and collection of tax. The provision also makes it clear that if the Commissioner accedes to the request of a dealer to treat each of those places of business as separate units, then all the provisions of the Act regarding registration, filing of returns, assessment and collection of tax shall apply, as if each of such places of business where separate units excepting for the purposes of considering the eligibility for payment of tax under Sub Section (5) of Section 6. In the instant case, while the petitioner had preferred an application under Section 20(3) for treating the various places of his business as separate units, the 3rd respondent acceded to the request of the petitioner with regard to the different businesses carried on by the petitioner, save the granite metal business, by treating those premises as separate units. When it came to the granite metal business carried on by the petitioner, the 3rd respondent found that there were two units where the said business was carried on and accordingly, he took the view that both these units should be treated as a single unit since it pertained to the same line of business. I am of the view that there is nothing illegal or arbitrary in the said view of the 3rd respondent insofar as he has applied a relevant yardstick viz. the nature of business, while considering the application of the petitioner for treating the places of business as separate units for the purposes of levy, assessment, collection of tax under the Act. The exercise of discretion by the 3rd respondent cannot be said to be either arbitrary or illegal. The challenge against Ext. P11 order of the 3rd respondent must also, therefore, fail. Resultantly, the writ petition fails and is accordingly dismissed.