

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

RP.No. 999 of 2014

AGAINST THE JUDGMENT IN OT.REV.NO. 112/2012, DATED 27-09-2013

PETITIONER(S)/REVISION PETITIONER :

**M/S.MUBARACK JEWELLERY,
RAMANATTUKARA, KOZHIKODE,
REPRESENTED BY ITS MANAGING PARTNER,
K.C.MOHAMMED RASHEED.**

**BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN**

RESPONDENT(S)/RESPONDENT IN REVISION PETITION :

STATE OF KERALA

BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 23-01-2015,
THE COURT ON 23-02-2015 PASSED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURES A TO E: NIL

**ANNEXURE F: TRUE COPY OF THE ANNUAL RETURN FOR THE YEAR 2009-10
DATED 13.05.2010.**

**ANNEXURE G: TRUE COPY OF THE DEMAND NOTICE ISSUED BY
COMMERCIAL TAX OFFICER FOR THE YEAR 2010-11
DATED 26.09.2012.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

Ashok Bhushan, Ag. C.J & A.M. Shaffique, J.

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R.P. No. 999 of 2014

in

O.T. Rev. No. 112 of 2012

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Dated this, the 23rd day of February, 2015.

ORDER

Shaffique, J.

This review petition is filed by the Revision Petitioner seeking to review the judgment dated 27/9/2013 in OT (Rev) number 112 of 2012, interalia contending that on account of certain new and important matters which could not be brought to the notice of this court, new questions of law arise for consideration.

2. In the revision, petitioner challenged the order passed by the assessing authority granting permission to pay, compounded tax under section 8(f) of the Kerala Value Added Tax Act (hereinafter referred as the Act) at Rs. 51,350/- per month. The compounded tax fixed for the year was 135% of Rs. 4,51,930/-. The commercial tax officer took the relevant financial year as 2008-09. The petitioner had transacted sales only for 17 days. The tax paid conceded is Rs. 3,76,502/- and therefore the net tax payable calculated proportionately to the whole financial year will come to Rs.4,51,930/-. Since the annual turnover conceded in the annual

return filed for the year 2009-10 is Rs. 42,02,787/- the applicable rate was 135% of Rs. 4,51,930/-. The Appellate Authority, the Tribunal and this Court did not interfere with the said finding.

3. The contention urged by the petitioner was that he was entitled to get rebate of the purchase tax paid by him amounting to Rs. 3,72,820/- and under section 12 of the Act, he is entitled to adjust the purchase tax against the output tax payable and entitled to get refund of the excess purchase tax paid. Therefore, while filing return for the year 2008-09, petitioner paid tax under section 6(2) of the Act along with output tax payable. His contention was that the assessing authority should not have included purchase tax paid under section 6(2) of the Act. He also referred to circular number 38/2008 issued by the Commissioner of Commercial Taxes stating that purchase tax need not be taken into account for arriving at the compounded tax payable, which was found in his favour by the Appellate Tribunal.

4. In the judgment impugned this court found that as per section 8(f) of the Act, the highest tax payable as conceded in the return or accounts or tax paid by him under the Act whichever is higher has to be taken into consideration for the purpose of arriving at

the compounded tax. The application for compounding was submitted during the year 2010-11. The application has to be considered under Rule 11 of the Kerala Value Added Tax Rules and while considering the statutory scheme, the word 'tax paid' cannot be given any meaning other than the tax actually paid. In fact, in the review petition, similar contentions have been urged. Only difference is that the petitioner has produced Annexures F and G to indicate that purchase tax paid under section 6(2) of the Act was entitled for rebate as per section 12 of the Act and the claim of rebate has been allowed by the Department. The copy of annual return for 2009-10 is produced as Annexure F and the notice of demand issued by the assessing authority for the year 2010-11 is produced as Annexure G. Taking into account Annexure G, it is contended that the judgment requires to be reviewed.

5. It is argued that the tax as defined under section 2 (xlvi) of the Act is tax payable under the Act and therefore the purchase tax should not have been taken into consideration for the purpose of assessing compounded tax. On a perusal of the review petition, the grounds mentioned therein and the questions of law now raised, we do not find anything new other than producing Annexure F and G.

6. The question considered by the Division Bench in the impugned judgment was whether the purchase tax paid by the petitioner can be excluded while assessing the compounded tax to be paid. It is already found that purchase tax is also a tax paid and therefore the said amount can be included for assessing the compounded tax. The only difference now pointed out is that the petitioner got a rebate for the purchase tax. In fact, the Appellate Tribunal had come to a clear finding that since the petitioner did not seek for any rebate during the return period which was taken into consideration for the purpose of arriving at the compounded tax, petitioner cannot claim any such benefit. This finding has been approved by the Division Bench. The documents now produced only indicate that petitioner got rebate of the purchase tax, subsequently. In fact, under section 12 of the Act, it is clearly provided that unregistered dealers or dealer paying compounded tax under section 8 shall not be eligible for rebate under section 12(1).

7. Petitioner relies upon circular no. 38/2008. The said circular is issued in clarification to an earlier circular no. 42/2006. In circular no. 42/2006, clause 4 indicated that the tax payable for the purpose of arriving at the compounded tax liability will be the total

of the tax under section 5 (1) and (5) of KGST Act, 1963 for the periods prior to 1/4/2005. For the subsequent periods it will be the total of the net tax payable and purchase tax under section 6(2) of the KVAT Act, 2003.

8. This provision has been clarified by indicating that tax payable bring within its ambit the element of purchase tax under section 6(2) also. But, in the circular issued, it was instructed to add purchase tax again to the net tax payable for arriving at the tax payable as per the Act, which is inconsistent with the provisions of the Act. In fact, circular no.38/2008 was issued as a clarification only to the extent of computing tax payable taking into consideration the relevant years when KGST Act was in force and when KVAT Act came into effect. It cannot have a different meaning than what is provided under the Act. In fact in the circular itself the tax payable as per the Act has been stated to be as laid down in Rule 16 of KVAT Rules.

9. As per Rule 16, which was amended on 19/1/2010 with effect from 1/4/2005, the net tax payable by registered dealer for a return period is computed as (a) net tax payable =(output tax due + tax on purchase due + reverse tax) - (input tax credit paid + special rebate paid) or (b) presumptive tax paid under sub section (5) of section 6 and tax paid under

subsection (2) of section 6.

10. Prior to 1/4/2005, the net tax payable was considered as (output tax + tax on purchase + reverse tax) - (input tax credit + special rebate). Therefore the contention of the petitioner that purchase tax was not part of tax payable or tax paid for the year 2008- 2009 is absolutely baseless. The rebate was claimed only in the subsequent year, by which no benefit can be claimed by the petitioner.

11. Under such circumstances, we do not think that the grounds urged by the petitioner warrants review of the judgment.

Review petition is therefore dismissed.

Sd/-

Ashok Bhushan, Ag. Chief Justice

Sd/-

A.M. Shaffique, Judge.

Tds/