IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

WP(C) NO. 3494 OF 2017

PETITIONER/S:

M/S. CHINNAN SONS JEWELLERY
PERINTHALMANNA, REPRESENTED BY ITS MANAGING PARTNER,
M.C.MARTIN.

BY ADVS.
SMT.S.K.DEVI
SMT.P.K.MAYADEVI

RESPONDENT/S:

1 THE COMMERCIAL TAX OFFICER
DEPARTMENT OF COMMERCIAL TAXES, PERINTHALMANNA-679322.

2 STATE OF KERALA
REPRESENTED BY ITS FINANCE SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695001.

BY SPL. GOVERNMENT PLEADER SRI.ARUN AJAY SHANKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25.03.2025, THE COURT ON 07.04.2025 DELIVERED THE FOLLOWING:

MOHAMMED NIAS C.P., J.

...

W.P(C) No.3494 of 2017

...

Dated this the 7th day of April, 2025

JUDGMENT

The petitioner is a firm doing business in jewellery and is an assessee under the Kerala Value Added Tax Act, 2003 (for short, 'the Act') on the files of the 1st respondent Commercial Tax Officer. For the year 2013-2014, the petitioner opted to pay tax under Section 8(f) of the Act. The option was allowed fixing the liability at Rs.4,14,115.00/-, and the petitioner remitted the tax accordingly. The petitioner contends that he had collected an amount of Rs.90,935.42/-, which the petitioner was entitled under the first proviso to Explanation 6 of Section 8(f) of the Act, which directed the dealers who opt for payment of tax under the said clause to collect tax at a rate not exceeding 1.25% for the commodity, but, where the tax so collected during the year is in excess of the tax payable for the year under the said clause, the tax collected in excess was directed to be paid over to the Government in addition to the tax payable under the said clause.

2. Notwithstanding the above, the petitioner was issued with an order dated 29.12.2016, Ext.P1, contending that the dealers who compounded

for the first time in 2013-2014 and 2014-2015 are not entitled to collect tax and the said defects were noticed by the Accountant General, pursuant to which a notice was issued. Accordingly, an additional demand for Rs.1,20,944.00/- was made on the petitioner, computing Rs.90,935/- being the tax collected by the petitioner and Rs.30,009/- as the interest under Section 31(6) of the Act on the tax amount. The petitioner contends that the allegations in Ext.P1 are completely against the provisions of the Act and that he had opted to pay tax under Section 8(f). It is also his contention that by the Finance Act 2014, the dealers of jewellery who opted for compounding under Section 8(f) get the benefit and are entitled to collect tax on the same. The petitioner argues that as per clause (iii) under Explanation 6 to Section 8(f), the tax collected by dealers at a rate not exceeding 1.25% during the year 2013-2014 shall be deemed to be validly collected. In view of the above, and contending that the tax collected during the period 2013-2014 is a valid collection, Ext.P1 is sought to be quashed.

3. A counter affidavit has been filed on behalf of the respondents contending that as per the provisions, the dealers who are paying tax under the compounded scheme during the previous year alone are entitled to collect tax, as the tax permitted to be collected as far as the dealer opting for compounding depends upon the compounded tax paid or payable under this

clause for the previous year/years in percentage, as shown in the table appended under clause (iii) of Section 8(f) of the Act. Reliance was also placed on the table referred to above to contend that the compounded tax payable for the year under option, for a dealer opting to compound, is computed on the basis of the tax paid/payable for the previous years.

4. Having heard the learned counsel for the petitioner and the learned Government Pleader, and after analysing the relevant provisions of the Act, it is to be noticed that there are two provisions for payment of compounded tax. While the first one is under Section 8(f)(i)(a), (b), (c) (d), which applies to the payment of compounded tax for the first time, the second provision for payment of compounded tax is as per sub-clause (vii) of Section 8(f) of the Act, as per which a specified percentage starting from 103% to 125% of the tax paid or payable for the previous year has been fixed for the payment of compounding tax, based on the length of period of the compounded steps, i.e. those who paid tax under the compounded scheme for 5 years, 3 years and others. This provision applies to dealers who have continuously compounded the payment of tax for three years.

5. It is also to be noticed that Section 8(f) was amended by substituting with a new clause in the Finance Act, 2014, giving retrospective effect from 01.04.2013. Sub-clause (iii) of Section 8(f) makes it clear that “the

dealer who opts payment of tax **under this clause**, may collect tax of the deal as shown in the table. However, the table clearly illustrates that the compounded tax payable for the current year is presented in percentages based on the tax paid or payable from previous years, indicating that it applies to all compounded dealers, regardless of their compounding status. The phrasing “compounded tax payable for the year under option” pertains to the current year and encompasses percentages specified in both subclauses related to past tax payments. If the provision were solely applicable to those previously compounding, the table would not include first-time compounding rates. Thus, dealers opting for compounding under section 8(f) are granted the authority to collect tax at the stated rates, irrespective of whether they are first-time or continuing compounded dealers. Consequently, the restriction against tax collection specifically applies to compounded dealers under sections 8(a), 8(c), and 8(d) of the Kerala Value Added Tax Act 2003, with no such restriction for those under section 8(f). This being so, and in the absence of any provision indicating that the collection of tax, as narrated above, is permitted only to the dealers who have compounded during the previous years alone and not permissible to dealers who are compounding for the first time, the contention of the respondents cannot be accepted.

6. Given the above, I am not inclined to accept the respondents'

contentions, and the writ petition has to succeed. Ext.P1 is quashed. It is also declared that the petitioner's collection of the tax for the year in question was valid.

The writ petition is allowed as above.

Sd/-

MOHAMMED NIAS C.P.
JUDGE

okb/

APPENDIX OF WP(C) 3494/2017

PETITIONER EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ASSESSMENT ORDER NO.32100763701/2013-14 DATED 29.12.2016.