

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 17TH DAY OF JULY 2018 / 26TH ASHADHA, 1940

WA.No. 228 of 2017 IN WPC. 371/2016

APPELLANT(S)/PETITIONERS

N.S.S. KARAYOGAM
KUNISSERY, PALAKKAD DISTRICT,
REPRESENTED BY ITS PRESIDENT,
A.SETHUMADHAVAN NAIR

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S)/RESPONDENT:

1. THE COMMERCIAL TAX OFFICER (LUXURY TAX)
PALAKKAD-678001
2. KERALA AGRICULTURAL INCOME TAX & SALES TAX APPELLATE
TRIBUNAL
ADDITIONAL BENCH, PALAKKAD-678004,
REPRESENTED BY ITS ASST. SECRETARY
3. THE INTELLIGENCE OFFICER
SQUAD NO.V,
DEPARTMENT OF COMMERCIAL TAXES,
PALAKKAD-678001

R BY GOVERNMENT PLEADER SRI.V.K.SHAMSUDDIN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-07-2018, ALONG WITH
W.A.NO.1154/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SCL.

**K.VINOD CHANDRAN
&
ASHOK MENON, JJ.**

W.A. Nos. 228 & 1154 of 2017

Dated this the 17th day of July, 2018

JUDGMENT

K.Vinod Chandran, J.

One appeal by the State and other by the assessee against the very same judgment of the learned Single Judge. The assessee is in appeal insofar as the finding that the assessee is liable to include the rent charged on furniture and utensils in the total turn over for determination of the luxury tax payable under the Kerala Tax on Luxuries Act, 1976 (for brevity 'the Act'). The State is in appeal against the setting aside of the penalty orders. The assessment is for the year 2014-15 and the penalty is for the years 2012-13 and 2013-14; which the learned Single Judge failed to notice, is the argument of the State.

2. We shall consider the appeal of the assessee first. The assessee in the year 2014-15 filed return showing the

W.A. Nos. 228 & 1154 of 2017

-2-

accommodation charges alone, which the assessee also claimed is under the limit as specified for Kalyanamandapams. The assessee's claim was on the premise that the assessee rents out the Kalyanamandapam for two days at a rent of Rs.3,000/- and the charge; to operate on a Kalyanamandapam, the rent should be above Rs.3,000/- per day as per Section 4(2)(c)(i) of the Act. The assessee also has a claim that the charges taken by the assessee for the utensils and furniture, supplied to the persons who rent out the Kalyanamandapam are, at best, rent received and could only be assessed as a transfer of right to use under the sales tax enactment. Immediately, we have to notice that the assessee despite the said contention does not have a case that the assessee had paid tax in accordance with the claim raised of being assessable only as a deemed sale of goods.

3. The learned counsel for the assessee on the basis of the provisions argued that there can be no inclusion of the rent received for utensils and furniture in the turn over for determination of the amounts on which the tax can be levied.

W.A. Nos. 228 & 1154 of 2017

-3-

It is also submitted that there are many instances when the person who rents out the hall does not rent out the furniture and utensils and resorts to outside suppliers. Hence, the inclusion can only be of the rent received for the hall argues the appellant assessee.

4. The learned Single Judge however rejected the said contention looking at the provision under Section 4(2)(c), with which we are in perfect agreement. The charge is on the "*accommodation, amenities and services provided excluding food and beverage*". The utensils and furniture supplied by the assessee to the person who takes on rent, for the purpose of accommodation, is an amenity or service which component also has to be included in the total turnover for the purpose of deciding the levy. When, as submitted by the learned counsel, utensils and furniture are supplied by outsiders even on rent, then necessarily, such component cannot be included in the turn over of the assessee. However, the assessee has not been able to show us, even in one instance, when such an amenity or service was provided from outside and included in

W.A. Nos. 228 & 1154 of 2017

-4-

the turnover. The contention taken is a mere speculation without any backing on facts. We are hence in perfect agreement with the findings of the learned Single Judge and we do not find any reason to interfere with the judgment to that extent. Writ Appeal No.228 of 2017 hence stands dismissed.

5. The State appeal is with reference to the penalty imposed in two other years. The learned Single Judge in setting aside the penalty, found that there is no deliberate suppression, especially, when the petitioner had paid tax for the admitted component and there was accounting of the amounts received in the books. The learned Single Judge observed so on the mistaken premise that the penalty is also imposed for the assessment year 2014-15. The penalty as noticed at the outset, was imposed for the assessment years 2012-13 and 2013-14. The orders issued in Ext.P6 and P6(a) reveal that the assessee despite notice on inspection refused to furnish the books of accounts. The penalty imposed is also based on the materials recovered on inspection; assessing tax

W.A. Nos. 228 & 1154 of 2017

-5-

on the turn over found and proved by the recovered materials. In such circumstances, we find that there is no reason to interfere with the penalty orders. We, hence, set aside the judgment of the learned Single Judge insofar as it interferes with the orders of penalty. W.A.No.1154 of 2017 is allowed. Ordered accordingly. The parties left to suffer their respective costs.

**Sd/-
K.VINOD CHANDRAN
JUDGE**

**Sd/-
ASHOK MENON
JUDGE**

Scl/17.07.2018