



OT.REV NO. 109 OF 2022

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2024:KER:74362

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 7TH DAY OF OCTOBER 2024 / 15TH ASWINA, 1946

OT.REV NO. 109 OF 2022

REVISION PETITIONER/PETITIONER

KIRAN JEWELS (INDIA),
A/1002, 10TH FLOOR "THE CAPITAL",
BANDRA - KURLA COMPLEX,
BANDRA (EAST), MUMBAI,
REPRESENTED BY ITS PRESIDENT SRI. MAHESH ITALIA.,
PIN - 400051

BY ADV TOMSON T.EMMANUEL

RESPONDENT /RESPONDENT

STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

OTHER PRESENT:

Sr GP V K SHAMSUDHEEN

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD
ON 07.10.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**ORDER**

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Dr. A.K.Jayasankaran Nambiar, J.

The petitioner in this O.T.Revision impugns the order dated 24.08.2022 of the Kerala Value Added Tax Appellate Tribunal, Ernakulam in T.A.(VAT) No.298 of 2021.

2. Briefly stated the facts necessary for disposal of this O.T.Revision is as follows:

The petitioner partnership is a dealer in gold and diamond jewellery in Mumbai and registered as such under the Maharashtra Value Added Tax Act and the Central Sales Tax Act. As part of promotion of its business and for the purposes of inspection and approval by customers in Thrissur, the Managing partner of the petitioner had along with his Manager carried a consignment of gold and diamond jewellery by air from Mumbai to Cochin on 13.08.2016. On arrival at Cochin airport, the consignment was detained by the Authorities of the Commercial Tax Department, who found that the petitioner was not carrying the requisite declarations in Form 8FA as mandated by Rule 66(6) of the Kerala Value Added Tax Rules, 2005. The petitioner



was therefore served with a notice under Section 47(6) of the Kerala Value Added Tax Act ('the Act' for short), proposing a penalty for attempted evasion of tax. On being served with the said notice and before exiting from the airport, the petitioner generated the necessary Form 8FA to cover the consignment that was brought by him from Mumbai and the said declaration was submitted before the Authority. Later on, he was also served with a notice under Section 67(1) of the Act, on the same premise as noticed in the proceedings initiated against him under Section 47(6) of the Act.

3. In the proceedings under Section 47 of the Act, the petitioner approached this Court by filing W.P(C) No.27226 of 2016 and by the judgment dated 18.08.2016, this Court permitted him to get a release of the consignment on furnishing a bank guarantee for the penalty amount demanded. It is the case of the petitioner that thereafter, he took back the consignment to Mumbai via Coimbatore after exiting the State of Kerala through the Walayar Check Post. It is also his case relying on Annexure IV document produced along with the O.T.Revision that the goods after release by the Intelligence Squad at Ernakulam were taken back to Mumbai after declaring at the Commercial Tax Check Post, Walayar for onward transportation



to Coimbatore airport and from there to Mumbai. The documents produced as Annexure IV clearly indicate that the goods that were originally brought by him from Mumbai were taken out of the State in their entirety and the document bears the certificate and seal of the Commercial Tax Check Post at Walayar as also the Commercial Tax Officer at Coimbatore. Presumably, in the light of the said documents, and the explanation offered by the petitioner, the proceedings under Section 47 of the Act were concluded in favour of the petitioner with the First Appellate Authority allowing his Appeal against the order of the Intelligence Officer that had imposed a penalty on him.

4. As regards the proceedings under Section 67 of the Act, we find that the Intelligence Officer before whom the petitioner states that he had produced a copy of the document cited as Annexure IV, overlooked the same and confirmed a penalty equal to twice the tax allegedly sought to be evaded by the petitioner. In his further appeal before the First Appellate Authority although the petitioner once again raised the said contention with regard to the return of the jewellery items back to Mumbai, the same was not considered by the First Appellate Authority who proceeded to confirm the penalty. The same was



the fate even before the Appellate Tribunal which also did not consider the factum of actual return of the goods brought from Mumbai, back to Mumbai through Coimbatore. The Appellate Tribunal also therefore confirmed the penalty equal to twice the tax allegedly sought to be evaded by the petitioner.

5. We have heard Sri.Tomson T. Emmanuel, the learned counsel appearing for the petitioner and Sri.V.K Shamsudheen, the learned senior counsel appearing for the State.

6. On a consideration of the facts and circumstances of the case and the submissions made across the bar, we find that the provisions of Section 67 of the Act provide for imposition of penalty in an amount not exceeding twice the amount of tax or other amount evaded or sought to be evaded, where it is practicable to quantify the evasion, or an amount not exceeding Rs.10,000/- in any other case. The question that confronts us in this O.T.Revision is whether the petitioner can be seen as person who sought to evade the tax payable in respect of the consignment of jewellery that was brought by him from Mumbai to Cochin? Taking in isolation the fact that the petitioner had not covered the consignment that was brought by him from Mumbai to Cochin by a valid Form 8FA declaration as mandated under



the Kerala Value Added Tax Rules, the Commercial Tax Authorities in the State were perhaps justified in assuming that but for the detection, the petitioner might have well evaded his tax liability by clandestinely selling the consignment of jewellery within the State of Kerala. The imposition of a penalty on him in that event would have been acceptable. In the instant case however, we find that it is admitted by the Commercial Tax Officer at the Check Post in Walayar that the very goods that were brought by the petitioner from Mumbai to Cochin were taken back in their entirety to Mumbai via Coimbatore. The document produced by the petitioner as Annexure IV along with the O.T. Revision sufficiently corroborates the said fact.

7. Under the said circumstances, we find that as a matter of fact, there was no sale occasioned of the jewellery items brought by the petitioner from Mumbai to Cochin within the State of Kerala. We are therefore of the view that, although at the stage of determining the penal liability of the petitioner under Section 67 of the Act, the State was justified in presuming that but for the detection/apprehension of the petitioner, the petitioner could well have evaded the tax due to the State, in the light of the subsequent events which clearly points to the petitioner not having actually sold any items within the State,



and having taken the goods outside the State a lenient view in the matter of the imposition of penalty is called for. We therefore set aside the impugned order of the Appellate Tribunal and confirm the penalty on the petitioner only in an amount of Rs.1 lakh which we feel would be sufficient taking note of the infringements occasioned by the petitioner of the provisions of the Kerala Value Added Tax Rules.

The O.T.Revision is disposed as above.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

SYAM KUMAR V.M.
JUDGE

smm

APPENDIX OF OT.REV 109/2022

PETITIONER ANNEXURES

- Annexure I** COPY OF MEMORANDUM/APPROVAL NOTE NO.JAPP/0592 DATED 12/08/2016 ACCOMPANIED WITH 354 NUMBER OF INDEPENDENT ITEMS OF DIAMOND STUDED GOLD JEWELLERY FOR EXAMINATION AND INSPECTION AT VARIOUS JEWELERS IN THRISSUR.
- Annexure I (a)** COPY OF MEMORANDUM/APPROVAL NOTE NO. JAPP/0594 DATED 12/08/2016 ACCOMPANIED WITH 477 NUMBERS OF INDEPENDENT ITEMS OF CZ DIAMOND STUDED JEWELLERY FOR EXAMINATION AND INSPECTION AT VARIOUS JEWELERS IN THRISSUR
- Annexure II** COPY OF ONLINE FORM NO.16 CERTIFICATE OF OWNERSHIP DATED 13/08/2016, GENERATED ON THE BASIS OF ANN-I & ANN-I(A) .
- Annexure II(a)** COPY OF FORM NO.8FA ONLINE DECLARATION DATED 13/08/2016, GENERATED ON THE BASIS OF ANN-I & ANN-I(A) .
- Annexure III** COPY OF NOTICE DATED 16/08/2016 ISSUED U/S.67(1) (A) (J) OF THE KVAT ACT PROPOSING PENALTY, SERVED TO APPELLANT ON 23/08/2016, BY THE INTELLIGENCE OFFICER, SQUAD NO.VIII, ERNAKULAM.
- Annexure IV** COPY OF REPLY DATED 08/09/2016 SUBMITTED BY APPELLANT AGAINST ANN-III NOTICE.
- Annexure IV(a)** : COPY OF ONLINE DECLARATION IN FORM NO. 8F FOR THE DECLARATION MADE FOR TRANSPORT OF GOODS AFTER EXAMINATION AND INSPECTION BACK TO MUMBAI FROM THRISSUR, SUBMITTED BEFORE COMMERCIAL TAX CHECK POST (OUT), WALAYAR, PALAKKAD AND EXIT PASS, PRODUCED ALONG WITH ANN-IV REPLY.
- Annexure V** COPY OF ORDER DATED 19/09/2016 PASSED BY INTELLIGENCE OFFICER IN MECHANICALLY IMPOSING PENALTY U/S.67(1) OF KVAT ACT, CONFORMING ANN-III PROPOSAL.



Annexure VI	COPY OF APPEAL DATED 30/06/2017 SUBMITTED AGAINST ANN-V ORDER IMPOSING PENALTY.
Annexure VII	COPY OF APPELLATE ORDER DATED 30/07/2021 PASSED IN ANN-VI APPEAL, PASSED BY JOINT COMMISSIONER (APPEALS), ERNAKULAM
Annexure VIII	COPY OF APPELLATE ORDER DATED 30/07/2021 PASSED IN ALLOWING APPEAL FILED AGAINST PENALTY IMPOSED U/S.47(6) BY THE INTELLIGENCE OFFICER, SQUAD NO.VIII, ERNAKULAM, PASSED BY JOINT COMMISSIONER (APPEALS), ERNAKULAM
Annexure IX	COPY OF 2ND APPEAL DATED 10/11/2021 SUBMITTED AGAINST ANN-VII 1ST APPELLATE ORDER.
Annexure X	2ND APPELLATE ORDER DATED 24/08/2022 PASSED BY KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM.