



2024/KER/47056

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 24TH DAY OF JUNE 2024 / 3RD ASHADHA, 1946

WP(C) NO. 12701 OF 2012

PETITIONER:

HILLWOOD FURNITURE PVT. LTD.
PETTA, FEROKE, KOZHIKODE,
REPRESENTED BY ITS MANAGING DIRECTOR SRI. C.SHERIFF.

BY ADVS.
SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENTS:

- 1 THE ASSISTANT COMMISSIONER
SPECIAL CIRCLE-II, COMMERCIAL TAXES, SALES TAX COMPLEX,
JAWAHARA NAGAR COLONY, ERANHIPALAM, KOZHIKODE-673 006.
- 2 COMMISSIONER OF COMMERCIAL TAXES
PUBLIC OFFICE BUILDING VIKAS BHAVAN.P.O.,
THIRUVANANTHAPURAM-695 033.

BY ADV. THUSHARA JAMES (SR GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

The petitioner was a registered dealer under the Kerala Value Added Tax Act, 2003, (hereinafter referred to as the 'KVAT Act') as also under the Central Sales Tax Act, 1956. Their Head Office is situated at Petta, Feroke, Kozhikode district. The petitioner is engaged in the import and sale of Pincoda Timber, which is imported from the Far East through Ports at Tuticorin or Mangalore or Kochi. According to the petitioner, depending on the requirements at the Branch at Pollachi or at the Head Office at Feroke, such imported timber is transported to Pollachi or Feroke from the ports of arrival. During the year 2009-2010, the petitioner had effected stock-transfer of certain timber from Feroke to Pollachi. The value of the stock, so transferred by way of stock-transfer, was Rs.39,24,347/-. In a notice issued to the petitioner under Section 25(1) of the KVAT Act, it was indicated that, in respect of the stock, which was



transferred from Feroke to Pollachi, the petitioner would be entitled to credit in respect of the advance tax paid in terms of Circular No.50/2006 dated 18-12-2006 only to the extent such tax that was in excess of 4%. Though the petitioner objected to the restriction of credit in the manner indicated above, by Ext.P3 order dated 16-04-2012, the assessment of the petitioner for the year 2009-2010 was completed by restricting the credit of advance tax paid in terms of the aforesaid Circular No.50/2006 to any amount paid in excess of 4%. The officer found justification for such restriction under the provisions of Section 13 of the KVAT Act. The petitioner has therefore approached this Court challenging Ext.P3 order to the extent it restricts credit of advance tax paid under Circular No.50/2006 to any amount paid in excess of 4%. None of the other findings in Ext.P3 order are under challenge in this writ petition.

2. Sri. Premjit Nagendran, the learned counsel appearing for the petitioner, would submit with reference to the provisions of Circular No.50/2006 that,



in respect of goods mentioned in that notification, advance tax was collected at Border Check Posts on the premise that these goods were susceptible to tax evasion. It is submitted that a reading of the Circular will itself indicate that the tax paid in terms of the provisions contained in the said Circular (at the rate of 12.50% for timber) is clearly not a tax on sale/purchase and is a tax collected as advance tax. It is submitted that thereafter, when there is a stock-transfer of the said goods to the Branch Office of the petitioner at Pollachi, there cannot be a retention of 4% of the tax paid as advance tax, relying on the provisions contained in Section 13 of the KVAT Act. The learned counsel would submit that Section 13 of the KVAT Act deals with input tax credit, and the definition of input tax credit in Section 2(xxiii) of the KVAT would indicate that advance tax paid in terms of the provisions contained in the Circular cannot be classified as input tax.

3. The learned Senior Government Pleader appearing for the respondents would attempt to justify



the denial of credit in the manner set out in Ext.P3 by referring to the provisions contained in Section 13 of the KVAT Act. The learned Senior Government Pleader places specific reliance on the provisions of sub-section (2) of Section 13 as also to the Second proviso to Section 13(2) of the KVAT Act to contend that the view taken by the officer in Ext.P3 is justified and the petitioner is not entitled to credit for the tax paid in terms of the Circular in its entirety and the credit will be restricted to the amounts paid in excess of 4%.

4. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader for the respondents, I am of the view that the petitioner is entitled to succeed. Circular No.50/2006 reads as follows:

"No. C2-37481/06/CT.

Dated:18-12-2006.

CIRCULAR No.50/2006

Sub:- Kerala Value Added Tax Act, 2003 - Advance Tax on evasion-prone items - Imposed

In exercise of the powers conferred by clause (c) of sub section (2) of section 3, read with sub



section (16A) of section 47 of the Kerala Value Added Tax Act, 2003, the undersigned, having considered it necessary to prevent evasion of tax in respect of the following evasion-prone commodities, order that tax in respect of the estimated sales turnover shall be collected at the Check Posts at the time of import into the State at the rates specified against each commodity below:

<i>Sl. No.</i>	<i>Commodities</i>	<i>Rate of Tax</i>
1	<i>Marble Slabs and Tiles</i>	<i>20%</i>
2	<i>Granite Slabs and Tiles</i>	<i>20%</i>
3	<i>Ceramic Floor and Wall Tiles including vitrified tiles</i>	<i>20%</i>
4	<i>Lift, Elevators and Escalators</i>	<i>12.50%</i>
5	<i>Glass Sheets</i>	<i>12.50%</i>
6	<i>Cuddapah Stones, Kotta Stones, any other similar stones and slabs</i>	<i>12.50%</i>
7	<i>Readymix Concrete</i>	<i>12.50%</i>
8	<i>Generator whether assembled or not</i>	<i>12.50%</i>
9	<i>Timber</i>	<i>12.50%</i>
10	<i>Live Chicken and Chicken Meat</i>	<i>12.50%</i>
11	<i>Petroleum Products other than LPG,</i>	<i>12.50%</i>
12	<i>Bitumen</i>	<i>4%</i>

While estimating the sale value, guidelines already circulated for valuation of items such as Chicken, Timber, etc. shall be followed.



The dealers who pay advance tax as detailed above can adjust the said amount against the output tax due for the month while filing return for the respective return period.

These orders shall take immediate effect.

Commissioner.”

A reading of the Circular will clearly indicate that the Circular was intended to ensure that there is no evasion of tax in respect of the goods specified in that Circular by collecting an advance tax at different rates for different goods as specified in the Circular at the Border Check Posts. It is thus clear that the tax collected in terms of the Circular is only an advance tax, which could be adjusted against the actual tax payable by a dealer while completing the assessment for the particular year. In the facts of the present case, it is not disputed that there was no taxable transaction entered into by the petitioner, and the goods in question had only been stock transferred to the Branch Office of the petitioner at Pollachi. Section 13 of the KVAT Act deals with the refund of input tax credit in the case of export or inter-State sale.



Section 13 of the KVAT Act to the extent it is relevant reads as follows:

“13. Refund of input tax in the case of export or inter-State sale: (1) Every sale in the course of export shall be a zero rate sale.

(2) Where input tax has been paid in respect of the purchase of any goods including capital goods, except those goods coming under the Fourth Schedule, and such goods are either,-

(i) sold in the course of export; or

(ii) sold in the course of inter-State trade or commerce; or

(iii) sent to outside the State otherwise than by way of sale in the course of inter- State trade; or

(iv) (a) used or consumed in the manufacture of goods, other than those falling under the Fourth Schedule, or used as containers or as packing materials for such goods and such manufactured goods are sold in the course of export; or

(b) used or consumed in the manufacture of taxable goods or used as containers or as packing materials of such goods manufactured and such manufactured goods are sent outside the State either by way of sale in the course of inter- State trade or commerce or otherwise; or



(v) used as Capital goods; the input tax paid on such goods shall be refunded to the person making such sales in the course of export or in the course of inter-State trade or commerce or sending such goods to outside the State, as the case may be, in such manner and subject to such conditions as may be prescribed:

Provided that the dealer claiming such refund shall not claim input tax credit on such purchases for any return period:

Provided further that where the goods are sent to outside the State otherwise than by way of sale in the course of inter- State trade or export or where the sale in the course of interstate trade is exempted from tax, the refund under this section shall be limited to the amount of input tax paid in excess of five per cent on the purchase turnover of such goods sent outside the State, re-sold or used in the manufacture, as the case may be:

Provided also that in the case of capital goods, the refund of input tax will be allowed in such installments as may be prescribed.

Input tax is defined in Section 2(xxiii) of the KVAT Act.

Section 2(xxiii) of the KVAT Act reads as follows:

“2(xxiii) “Input Tax” means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods in the course of business and includes the tax paid



on the purchase of materials for the research and development in relation to any goods”.

A combined reading of the provisions of Circular No.50/2006 and the definition of input tax in Section 2(xxiii) of the KVAT Act indicates that the tax paid in terms of Circular No.50/2006 cannot assume the character of input tax. Therefore, I am constrained to take the view that the provisions of Section 13 of the KVAT Act, on which the reliance was placed by the Officer to deny the claim for credit of the entire tax paid by the petitioner in respect of goods brought into the State and thereafter stock-transferred to Pollachi, will not apply in the facts and circumstances of the case.

5. Therefore, Ext.P3 order, to the extent it denies credit to the entirety of the tax paid by the petitioner in terms of Circular No.50/2006 and in respect of goods stock-transferred to Pollachi, cannot be sustained in law. It is declared that the petitioner will be entitled to the credit for the entire amount paid in terms of Circular No.50/2006 for the goods in question which were stock-



transferred to its Branch Office in Pollachi.

The writ petition is allowed in the manner indicated above. The 1st respondent or any other competent officer shall pass fresh orders taking into consideration the declaration as contained in this judgment.

Sd/-
GOPINATH P.
JUDGE

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APPENDIX OF WP(C) 12701/2012

PETITIONER'S EXHIBITS

- Exhibit P1 PHOTOCOPY OF PROPOSAL NOTICE FOR 2009.10
DATED 29.03.12.**
- Exhibit P2 PHOTOCOPY OF REPLY DATED 04.04.2012 TO
EXT.P1.**
- Exhibit P3 PHOTOCOPY OF ASSESSMENT ORDER DATED
16.04.2012 FOR 2009.10.**
- Exhibit P9 TRUE COPY OF THE APPEAL NO. 44 OF 2024
(WITHOUT ANNEXURES)**