



2024/KER/35347

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 27TH DAY OF MAY 2024 / 6TH JYAISHTA, 1946

ST.REV. NO. 1 OF 2017

AGAINST THE ORDER/JUDGMENT DATED IN TA NO.64 OF 2015 OF
AGRL.I.T. ADDITIONAL BENCH, PALAKKAD

PETITIONER/APPELLANT/ASSESSEE

M/S.I.T.I.LTD

KANJIKODE WEST, PALAKKAD-678 623, REPRESENTED BY
CHIEF FINANCE MANAGER, SMT.C.A.MALATHY M.

BY ADVS.

SRI.T.M.SREEDHARAN (SR.)

SMT.DIVYA RAVINDRAN

SMT.MERLIN MANSY

SRI.V.P.NARAYANAN

RESPONDENT/RESPONDENT/REVENUE

STATE OF KERALA

REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.

OTHER PRESENT:

SR GP VK SHAMSUDHEEN

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION
ON 27.05.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

In the above S.T. Revision the following questions of law have been raised:

“(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in sustaining the denial of concessional rate of tax for the turnover of Rs.2,95,15,307/- received as per the supplementary bills, for concluded sale and supported by a valid 'C' Forms?

(ii) Did not the Appellate Tribunal err in law in failing to take note that for a single sale of equipment for an agreed price, the price is paid in two parts, the first part as per the provisional bills and the second payment in accordance with the purchase order?

(iii) Should not the Appellate Tribunal have accepted the appellant's claim that in so far as the issue of 'C' Form was concerned, the 'C' Form is issued against every single sale and that the CST Act did not contemplate two 'C' Forms for a single sale?

(iv) Did not the Appellate Tribunal err in law in not considering the claim for in transit with regard to Rs.5,83,33,441/- which is supported by Form-E1 about which



there was no dispute?. Is not the denial of exemption in respect of the above turnover arbitrary and illegal?

(v) Did not the Appellate Tribunal err in law and on facts, in not accepting the Paper Book filed on the ground that the same was filed at the time of hearing?

(vi) In the absence of a sale without 'C' Form, is the levy of CST on a part of the turnover at 10% is legal, valid and sustainable in law?

2. As regards question Nos.1, 2,3 and 6, we find that the issue has already been decided by a Division Bench of this Court, in respect of the same assessee for a subsequent assessment year, by answering the question of law raised against the assessee and in favour of the revenue. Accordingly, following the said judgment, the aforesaid questions are answered against the assessee and in favour of the revenue.

3. As regards question No.4 raised by the petitioner, we find that the Tribunal by the order impugned in this revision petition was called upon to consider the entitlement of the petitioner for the benefit of concessional rate of tax on sales in transit. The Tribunal found that as per the statutory provisions,



the sales in transit had to be evidenced by statutory forms in Form-E1 under the Central Sales Tax (Registration and Turnover) Rules ['CST (R&T) Rules' for short] and in the instant case, in support of the claim for exemption on transit sales, the petitioner had produced E-Forms that pertained to sales effected in 2002-03, whereas, the claim for exemption for transit sales was in respect of the assessment year, 2001-02. The Tribunal therefore found that subsequent sales of goods effected in 2002-03 could not be considered as transit sales of goods purchased in 2001-02, since the transportation of the said goods stood complete in all respects in 2001-02 itself.

4. Although the learned counsel for the petitioner points out that copies of the relevant E Forms that were accounted in the subsequent years are available with the petitioner and they can be produced before the authorities for verification, we fail to see how that would be of any assistance to the petitioner since it is trite that the claim for exemption in respect of transit sales must be justified by showing the sale as having occurred in transit. As already noticed, the petitioner cannot establish the aforesaid fact since the E1 Forms relied on by him have



admittedly been accounted only in a subsequent year, which could only be after the transportation of the goods and not while the goods were in transit.

5. We therefore see no reason to interfere with the finding of the Appellate Tribunal on this issue and question No.4 raised by the petitioner in this Revision Petition is therefore answered against the assessee and in favour of the revenue. As regards question No.5, we are of the view that the same does not raise any substantial question of law and is merely an issue of fact. The same is therefore, not answered.

The S.T. Revision is thus dismissed, by answering the questions of law raised against the assessee and in favour of the revenue.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

smm

APPENDIX OF ST.REV. 1/2017

PETITIONER ANNEXURES

- Annexure A** TRUE COPY OF THE ASSESSMENT ORDER NO. 310155306/2002-03 DATED 16.08.2010 ISSUED BY THE ASST. COMMISSIONER (ASSESSMENT), SPECIAL CIRCLE PALAKKAD.
- Annexure B** TRUE COPY OF THE APPELLATE ORDER KVATA NO. 258/11 DATED 18.12.2014 ISSUED BY THE DEPUTY COMMISSIONER (APPEALS)-1, KOTTAYAM.
- Annexure C** TRUE COPY OF THE APPELLATE TRIBUNAL'S ORDER IN T.A NO. 64/2015 DATED 30.11.2015 ISSUED BY THE KVATA APPELLATE TRIBUNAL, PALAKKAD.
- Annexure D** TRUE COPY OF THE RECTIFICATION PETITION NO. R.P NO. 2/2016 FILED BY THE PETITIONER BEFORE THE APPELLATE TRIBUNAL IN T.A NO. 64/2016.
- Annexure E** TRUE COPY OF THE ORDER DATED 22.06.2016 IN R.P NO. 02/2016 IN T.A NO. 64/2016 ISSUED BY THE KVAT APPELLATE TRIBUNAL, PALAKKAD.