



2024/KER/53655

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.

WEDNESDAY, THE 17TH DAY OF JULY 2024 / 26TH ASHADHA, 1946

OT.REV NO. 125 OF 2020

AGAINST THE ORDER DATED 20.12.2019 IN TA(VAT) NO.861 OF 2018 OF
KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM

REVISION PETITIONER/ (APPELLANT/RESPONDENT/REVENUE) :

STATE OF KERALA

REP BY JOINT COMMISSIONER OF STATE TAX (LAW) STATE
GOODS AND SERVICE TAX DEPARTMENT, ERNAKULAM

BY ADV GOVERNMENT PLEADER SRI.V.K.SHAMSUDHEEN, SR

RESPONDENT/ (RESPONDENT/APPELLANT/ASSESSEE) :

M/S.PETROLINK DATA SERVICES (P) LTD.
TEJOMAYA BUILDING, 401A, THRIKKAKARA, KUSUMAGIRI P.O.,
KAKKANAD-682 030.

BY ADVS.

SRI.R.JAIKRISHNA
SRI.NARAYANI HARIKRISHNAN
SRI.ANISH P.

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON
17.07.2024, ALONG WITH OT.Rev.151/2020, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



:2:

OT.Rev.Nos.125 & 151/2020

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.

WEDNESDAY, THE 17TH DAY OF JULY 2024 / 26TH ASHADHA, 1946

OT.REV NO. 151 OF 2020

AGAINST THE ORDER DATED 20.12.2019 IN TA (VAT) NO.963 OF 2018 OF
KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM

REVISION PETITIONER/ (APPELLANT/RESPONDENT/REVENUE) :

STATE OF KERALA

REP.BY JOINT COMMISSIONER OF STATE TAX (LAW), STATE
GOODS AND SERVICE TAX DEPARTMENT, ERNAKULAM.

BY ADV GOVERNMENT PLEADER SRI.V.K.SHAMSUDHEEN, SR

RESPONDENT/ (RESPONDENT/APPELLANT/ASSESSEE) :

M/S.PETROLINK DATA SERVICES (P) LTD.,
TEJOMAYA BUILDING, 401A, THRIKKAKARA,
KUSUMAGIRI.P.O, KAKKANAD-682030.

BY ADVS.

SRI.R.JAIKRISHNA

SRI.NARAYANI HARIKRISHNAN

SRI.ANISH P.

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR
ADMISSION ON 17.07.2024, ALONG WITH OT.Rev.125/2020, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



:3:

OT.Rev.Nos.125 & 151/2020

O R D E R**Dr. A.K.Jayasankaran Nambiar, J.**

These OT. Revision petitions arise from a common order of the Tribunal dated 20.12.2019 in TA(VAT) Nos.861/2018 and 943/2018. OT. Revision No.125 of 2020 is a petition impugning the common order of the Tribunal to the extent it cancels the penalty imposed on the respondent assessee under Section 47(6) of the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act'). OT. Revision No.151 of 2020 is the revision petition preferred against the common order of the Tribunal to the extent it cancels the additions made in the assessment order pertaining to the respondent assessee for the assessment year 2012-2013, based on the penalty order passed by the Intelligence Officer.

2. The brief facts necessary for the disposal of these Revision Petitions are as follows:

The respondent assessee was engaged in the business of IT Technical Support and Software Development during the year 2012-2013. Apparently, they had not taken registration under the KVAT Act, 2003 during the said year and the registration was applied for and



:4:

OT.Rev.Nos.125 & 151/2020

obtained only in 2014, when the assessee became a unit situated in the special economic zone. The penalty proceedings were initiated in respect of a consignment of computers, peripherals, and parts, which the assessee had obtained from a dealer in Bangalore. Although it was the case of the respondent assessee that the consignment was accompanied by valid invoices and checkpost declarations in Form 8F as also by a declaration in Form 16 that was subsequently produced before the detaining authority to show that the goods were intended for own use, and not for resale, the Intelligence Officer by his order dated 21.08.2017 found that the transportation was with an intent to evade tax, and consequently imposed a penalty of Rs.8,12,900/- on the respondent assessee.

3. In an appeal preferred by the assessee before the First Appellate Authority, the said authority dismissed the appeal and sustained the order of the Intelligence Officer. It was, therefore, that the assessee preferred a further appeal before the Appellate Tribunal.

4. In the meanwhile, the assessment proceedings were also completed against the assessee by the assessing authority, who relied on the penalty order passed by the Intelligence Officer to sustain additions to the declared turnover of the assessee. The appeal



proceedings against the said assessment order also culminated in an order that was the subject of an appeal before the Appellate Tribunal against the additions made against the assessee.

5. The Appellate Tribunal considered both the appeals together and found on facts, after examining the assessment records as also the penalty files, that during the return period 2012-2013, Form 8F declarations signed by the consignor were available at page 39 of the records produced by the Department. Similarly, the tax invoice covering the consignment that was detained was also available at pages 41 to 45 along with e-sugam form issued by the Government of Karnataka dated 28.08.2012. The Tribunal also found that the assessee had also produced the necessary Form 16 before the Intelligence Officer, after the detention, to demonstrate that the goods that were transported were for the own use of the assessee and not for the purposes of resale. Taking note of the said documentary evidence before it, the Tribunal came to the conclusion that the necessary documents mandated by Section 47(2) of the KVAT Act had been produced before the authority, and inasmuch as there were no findings based on any material to show that there was an attempt at evasion of tax by the assessee, the penalty order could not be legally sustained. It was on this basis that the Appellate Tribunal found that the penalty imposed by the Intelligence



:6:

OT.Rev.Nos.125 & 151/2020

Officer at the first instance and sustained by the First Appellate Authority in appeal had to be cancelled.

6. Based on their finding with regard to the non-sustainability of the penalty, the Appellate Tribunal also found that the additions made in the assessment, based on the penalty order of the Intelligence Officer, could not also be sustained. Accordingly, the assessment order based on the penalty order was also set aside.

7. In these revision petitions preferred by the revenue before us, the learned Government Pleader would submit that there was in fact an attempt at evasion of tax as evidenced by the findings of the Intelligence Officer. He would also persuade us to find that the attempt at evasion of tax was evident from the very fact that the assessee had not taken out a registration under the KVAT Act at the time of receipt of goods from the consignor in Bangalore.

8. We have heard Sri.V.K.Shamsudheen, the learned the learned Government Pleader for the petitioner State as also Sri.R.Jaikrishna, the learned counsel for the respondent assessee in both the OT. Revision petitions.



9. On a consideration of the rival submissions, we are of the view that these OT. Revision Petitions at the instance of the State must necessarily fail. The Appellate Tribunal in the order impugned in these revision petitions clearly finds as a matter of fact that the consignment that was detained was accompanied by valid transport documents such as the invoice and the checkpoint declarations in Form 8F. The Tribunal also found that the assessee had immediately after the goods were detained, produced the statutory declarations in Form 16 to demonstrate that the goods that were being transported were for the own use of the assessee. In contrast to this, nothing has been produced before us that would suggest that the assessee was engaged in any trading activity during the assessment year 2012-2013. We are therefore of the view that the finding of the Appellate Tribunal, based on the documents available before it, that there was no intention on the part of the assessee to evade payment of tax is legally sustainable. We might also take note of the factual situation in the instant case that at the time of receipt of the consignment of goods from Bangalore, the respondent assessee had also suffered the CST at the higher rate of 5.5%, which is applicable for unregistered dealers. It is apparent, therefore, that while obtaining the goods from outside the State, the assessee did not get the benefit of a lower rate of tax. Thus, in conclusion, we find that the impugned order of the Tribunal that sets



2024/KER/53655

:8:

OT.Rev.Nos.125 & 151/2020

aside the penalty order and assessment order, does not require any interference in these revision petitions. These Revision Petitions fail and are accordingly dismissed by answering the questions of law raised therein against the revenue and in favour of the assessee.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

mns



APPENDIX OF OT.REV 125/2020

PETITIONER ANNEXURES

- ANNEXURE A** A TRUE COPY OF THE ORDER NO RA-1/612/2012-13 DATED 21.8.2017 UNDER SECTION 47(6) OF THE KVAT ACT
- ANNEXURE B** A TRUE COPY OF THE ORDER DATED 18.6.2018 IN KVATA NO 4901 OF 2017
- ANNEXURE C** CERTIFIED COPY OF THE COMMON ORDER OF THE TRIBUNAL IN T.A (VAT) NO 861 OF 2018 DATED 20.12.2019



:10:

OT.Rev.Nos.125 & 151/2020

APPENDIX OF OT.REV 151/2020

PETITIONER ANNEXURES

ANNEXURE A **A TRUE COPY OF THE ORDER NO.FAR
490/2017-18 DATED 17.02.2018 UNDER
SECTION 25(1) OF THE KVAT ACT.**

ANNEXURE B **A TRUE COPY OF THE ORDER DATED
31.07.2018 IN KVATA NO.828 OF 2018.**

ANNEXURE C **TRUE PHOTO COPY OF THE COMMON ORDER OF
THE TRIBUNAL IN T.A.(VAT)NO.943 OF
2018 DATED 20.12.2019.**