M/S. Avs Projects and Constructions Pvt. Ltd. Vs. State of Kerala

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Court : Kerala

Decided On : Sep-27-2013

Judge : Hon'Ble the Chief Justice Dr. Manjula Chellur

Appellant : M/S. Avs Projects and Constructions Pvt. Ltd.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE THE CHIEF JUSTICE DR. MANJULA CHELLUR & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE FRIDAY, THE27H DAY OF SEPTEMBER20135TH ASWINA, 1935 OT.Rev.No. 93 of 2012 ------------------------- AGAINST THE

ORDER
IN TAVAT1162009 of KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM DATED3010-2009 REVISION PETITIONER: ------------------------- M/S. AVS PROJECTS & CONSTRUCTIONS PVT. LTD. 1ST FLOOR, PULIMATTATHU BUILDING, RAMANCHIRA MUTHOOR P.O., THIRUVALLA-689107. BY ADVS.SRI.HARISANKAR V. MENON SMT.MEERA V.MENON SRI.MAHESH V.MENON RESPONDENT: --------------- STATE OF KERALA, REPRESENTED BY SECRETARY TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-01. BY GOVERNMENT PLEADER SRI.BOBBY JOHN PULIKKAPARAMBIL THIS OTHER TAX REVISION (VAT) HAVING COME UP

FOR ADMISSION ON2709-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: OT.Rev.No. 93 of 2012 APPENDIX PETITIONER'S EXHIBITS ANNEXURE A: COPY OF

ORDER
ISSUED BY THE COMMERCIAL TAX OFFICER(WC& IT) ANNEXURE B:COPY OF APPELLATE

ORDER
ISSUED BY THE DEPUTY COMMISSIONER (APPEALS), KOLLAM. ANNEXURE C:COPY OF

ORDER
ISSUED BY THE COMMERCIAAL TAX OFFICER (WC & LT) ANNEXURE D: COPY OF

ORDER
ISSUED BY THE SECRETARY, KERALA VALUE ADDED TAXC APPELLATE TRIBUNAL, ERNAKULAM. /TRUE COPY/ PA TO JUDGE MANJULA CHELLUR C.J.

& A.M.SHAFFIQUE, J.

= = = = = = = = = = = = = = = = = = O.T.Revision No.93 of 2012 = Dated this the 27th day of September, 2013

JUDGMENT
Shaffique, J Revision petitioner challenges the order passed by the Kerala VAT Appellate Tribunal, Ernakulam in T.A.(VAT) No.116 of 2009. The issue involved is with reference to the assessment year 2007-08. The petitioner is engaged in the execution of works contract and is an assessee to tax under the VAT Act and the CST Act. He opted to pay tax under Section 8(a)(i) of the VAT Act at the compounding rate of 2% for the year 2007-08. Since the petitioner was having CST registration, the Assessing Authority did not grant the benefit of reduced rate of 2% tax. Annexure A is the order of the Assessing Authority. This order is challenged before the Deputy Commissioner (Appeals) who rejected the same as

per Annexure B order. An appeal was filed before the O.T.Revision No.93 of 2012 2 Tribunal. The Tribunal, after detailed consideration of the matter upheld the argument of the department and rejected the claim of the petitioner.

2. The question that arises for consideration is whether the petitioner is entitled for reduced rate of 2% tax in terms of Section 8(a)(i) of the Act even if the petitioner holds a CST registration.

3. Learned counsel for the petitioner contended that subsequent to the coming into force of the provisions of the Act under Section 8(a)(i), an amendment had been incorporated with effect from 01.04.2008 by which person who has no CST registration and who is not an importer alone were entitled for the benefit of reduced tax. It is argued that "or" in the unamended definition has to be read as "and" as the intention of the legislature in introducing section 8(a)(i) in the statute book with effect from 01.04.2005 was only to deny benefit of compounding rate of tax at 2% to importers having CST registration. The amendment, therefore, is in the O.T.Revision No.93 of 2012 3 form of a clarification. We do not think so. Section 8(a)(i) as on the date of assessment year clearly indicated that persons who is having CST registration "or" persons who are importers are not entitled for the benefit of reduced tax. A different meaning cannot be given to the same.

4. The argument is that in the amendment made with effect from 01.04.2008 the word `or' is deleted and the word `and' is incorporated making the amendment clarificatory in nature. Reliance is placed on the decision in Abdul Najeeb v.State of Kerala (2009 (1) KHC730 5. As far as the judgment in Abdul Najeeb`s case is concerned, that was a case in which the Government had clarified that soft wood includes rubber wood also. The learned Judge while deciding the said case formed an opinion that it is a well known fact that rubber wood is a highly perishable soft wood which can be made to a durable hardwood after a complicated process involving chemical impregnation. In that view of the matter, the Division Bench O.T.Revision No.93 of 2012 4 had observed that the amendment is only clarificatory in nature and exemption was available from the date of original notification.

6. As far as the present case is concerned, the amendment cannot be stated to be clarificatory. Persons having CST registration and importers are excluded from availing the compounding facility. That being the situation, we do not think that the order passed by the authorities below are erroneous and no substantial questions of law arise for consideration. Accordingly, the appeal is dismissed. MANJULA CHELLUR, CHIEF JUSTICE A.M.SHAFFIQUE, JUDGE. sj28/9