Waves Electronics (P) Ltd. vs State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1361847

Court : Kerala

Decided On : Jan-23-2023

Judge : Honourable Dr. Justice a.K.Jayasankaran Nambiar,Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : OT.Rev/65/2013

Appellant : Waves Electronics (P) Ltd.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. MONDAY, THE 23RD DAY OF JANUARY 2023 / 3RD MAGHA, 1944 OT.REV NO. 65 OF 2013 AGAINST THE ORDER/JUDGMENT DATED 19.11.2012 in TA(VAT) NoS.1562 & 1563 OF 2011 OF KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM REVISION PETITIONER/PETITIONER/ASSESSEE: WAVES ELECTRONICS (P) LTD. 155-B, ALAPPATT, TOC-H ROAD, VYTTILA, KOCHI-19. REPRESENTED BY ASSISTANT MANAGER(FINANCE) SRI. T.S. YESUDASAN. BY ADVS. SRI.V.ABRAHAM MARKOS SRI.ABRAHAM JOSEPH MARKOS SRI.ISAAC THOMAS SRI.P.G.CHANDAPILLAI

ABRAHAM SRI.SHARAD JOSEPH KODANTHARA RESPONDENT/REVENUE/RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

R2 THE DEPUTY COMMISSIONER (APPEALS) COMMERCIAL TAXES, IMPLEADED ERNAKULAM KOCHI-682015 (R2 IS IMPLEADED AS PER ORDER DATED 5.10.2016 IN IA 2346 OF 2016) BY ADV SPECIAL GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 23.01.2023, ALONG WITH OT.Rev.12/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. MONDAY, THE 23RD DAY OF JANUARY 2023 / 3RD MAGHA, 1944 OT.REV NO. 12 OF 2019 AGAINST THE ORDER/JUDGMENT DATED 19.11.2012 in TA(VAT) NoS.1562 & 1563 OF 2011 OF KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM REVISION PETITIONER/PETITIONER/ASSESSEE: WAVES ELECTRONIES (P) LTD., 155-B, ALAPPATT, TOC-H ROAD, VYTTILA, KOCHI-19, REP. BY ASSISTANT MANAGER (FINANCE), SRI.T.S.YESUDASAN. BY ADVS. SRI.V.ABRAHAM MARKOS SRI.ABRAHAM JOSEPH MARKOS SRI.ISAAC THOMAS SRI.P.G.CHANDAPILLAI ABRAHAM SRI.ALEXANDER JOSEPH MARKOS SRI.SHARAD JOSEPH KODANTHARA RESPONDENT/REVENUE/RESPONDENT: STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, STATE GOODS AND SERVICES TAX DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001. BY ADV SPECIAL GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 23.01.2023, ALONG WITH OT.Rev.65/2013, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING: :3:

ORDER

A.K.Jayasankaran Nambiar, J.

These Revision Petitions pertain to the assessment years 2008- 2009 and 2010-2011, and while there are several questions of law raised in the memorandum of revision petitions we re-framed the said questions to read as follows: Re-Drafted Questions of Law raised for decision by the Hon'ble High Court.

> 1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in holding that sales effected from bonded warehouse of the petitioner- company to the bonded warehouse of the Cochin Shipyard Ltd. does not qualify for exemption under Sl. No.57 of Schedule-I appended to the KVAT Act, 2003 ?

2) Whether on the facts and in the circumstances of the case and in the light of Section 53 of the SEZ Act read with Rule 5 (5)(a) of the SEZ Rules, the Appellate Tribunal is right in holding that the Appellant's sale of goods to Cochin :4: Shipyard Ltd. is not export sale under Section 5 (1) of the CST Act or a deemed export sale under Section 5(3) of the CST Act ? 3) Whether on the facts and in the circumstances of the case and in the light of G.O. No. (Rt.) 576/2003/ID dated 17.06.2003 and G.O. No.1154/2008/ID dated 06.10.2008, is the Appellate Tribunal right in holding that the Appellant is amenable to the provisions of KVAT Act ? 4) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the Circular No. C3.31297/07/CT dated 15.09.2007 is not applicable to the Petitioner ?

2. When the matter was taken up for hearing, we noticed that the

first question above has been decided against the assessee and in favour of the revenue by the decision of the Supreme Court in Nirmal Kumar Parsan v. CCT [(2020 11 SCC 294] where the Supreme Court has clarified that in situations where goods are imported into the country and taken outside the customs landing station/port for the purposes of storage in bonded warehouses situated within the territory of India, the importer concerned may claim exemption from the payment of import duties under the Customs Act, but the importer :5: cannot claim exemption from the levy of value added tax under the applicable State Legislation unless there are provisions thereunder specifically exempting taxable transactions in such goods from the levy of tax. Following the said decision, we answer the first question against the assessee and in favour of the revenue.

3. As regards question No.2 above, we find that the said question

has to be answered against the assessee and in favour of the revenue in view of the decision of the Division Bench of this Court in Lalitha Muralidharan v. Commissioner of Commercial Taxes [2017 (3) KLT SN 19 (C.No.26)] that affirmed the decision of a learned Single Judge in Lalitha Muralidharan v. Commissioner of Commercial Taxes [2016 (1) KLT SN 1 (C.No.1)]. Although an SLP is stated to be pending before the Supreme Court against the said judgment, since there is no stay granted by the Supreme Court, we answer the question against the assessee and in favour of the revenue.

4. As regards question No.3 above, we find that the said question

has also to be answered against the assesee and in favour of the revenue in view of the judgment of this Court in the petitioners own case as reported in Neutral citation Government of Kerala & Others :6: v. Waves Electronics (P) Ltd & Another [2022/KER/33475].

5. As regards question No.4 above, we find that Circular No.C3.31297/07/CT dated 15.09.2007 referred to therein is one that deals with the exemption granted by the State Government to sales

effected by units in a DTA to units situated inside an SEZ. On the facts

of the instant case, where the sale in question is one that is effected from a unit in the SEZ to the Cochin Shipiyard Ltd, the said circular can have no application. Accordingly, we answer the 4 th question also against the assessee and in favour of the revenue. In conclusion, the OT. Revisions are disposed by answering the questions referred to above against the assessees and in favour of the revenue. Sd/- A.K.JAYASANKARAN NAMBIAR JUDGE Sd/- MOHAMMED NIAS C.P. JUDGE mns :7: APPENDIX OF OT.REV 65/2013 PETITIONER ANNEXURES Annexure A TRUE COPY OF THE ASSESSMENT ORDERS FOR THE YEAR 008-09 DATED 25/02/2011 AND 2010-11(4/2011) DATED Annexure B TRUE COPY OF THE REVISED GROUNDS OF APPEAL FOR THE YEARS 2008-09 AND 2010-11 Annexure C TRUE COPY OF THE COMMON APPELLATE ORDER NO. KVATA DC (APPEALS) , KOTTAYAM. Annexure D TRUE COPY OF THE GROUNDS OF APPEAL FOR THE YEAR 2008-09 AND 2010-11 FILED BEFORE THE KVAT TRIBUNAL, ERNAKULAM. Annexure E TRUE COPY OF THE COMMON ORDER IN TA(VAT) NO. HONOURABLE TRIBUNAL, ERNAKULAM. Annexure F TRUE COPY OF THE REVIEW APPLICATIONS FOR THE YEARS 2008-09 & 2010-11 FILED ON 27/02/2013 BEFORE THE HONOURABLE TRIBUNAL. Annexure G TRUE COPY OF THE ORDER NO. 1/13 & 2/13 DATED HONOURABLE TRIBUNAL.

Annexure H TRUE COPY OF THE CLARIFICATION

THIRUVANANTHAPURAM. Annexure I TRUE COPY OF THE STATEMENT OF TURNOVER FOR THE YEARS 2008-09 & 2010-11. :8: Annexure J TRUE COPY OF THE CERTIFICATE ISSUED THE CUSTOMS AUTHORITY ANNEXURE K TRUE COPY OF THE RESOLUTION OF THE BOARD OF DIRECTORS IN ITS MEETING HELD ON 16.02.2013 OF THE PETITIONER COMPANY ANNEXURE L TRUE COPY OF THE BANK GUARANTEE NO.34/2011 DATED 06.07.2011 RENEWED UP TO 03.12.2015 ANNEXURE M TRUE COPY OF THE LETTER FROM INDIAN BANK SHANMUGAM ROAD, ERNAKULAM DATED 30.12.2014 ANNEXURE N TRUE COPY OF THE REQUEST FOR RETURN OF BANK GUARANTEE DATED 18.04.2015

ANNEXURE O TRUE COPY OF THE COMMON ORDER

ERNAKULAM. ANNEXURE Q TRUE COPIES OF THE REGISTRATION CERTIFICATES UNDER KGST, KVAT AND CST ANNEXURE R TRUE COPY OF THE ORDER NO.9/011/2002 IL:CSEZ/7451 DT.25.11.2002 ISSUED BY THE

DEPUTY DEVELOPMENT COMMISSIONER, CSEZ, KAKKANAD ANNEXURE S TRUE COPY OF THE SRO 151/2004 DT.13.2.2004 ANNEXURE T TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2004-2005 IN RESPECT OF THE PETITIONER COMPANY :9: APPENDIX OF OT.REV 12/2019 PETITIONER ANNEXURES ANNEXURE A TRUE COPIES OF THE GO.576/2003 DATED 17.6.2003 AND GO.1154/2008 DATED 6.10.2008.

ANNEXURE B TRUE COPY OF THE ASSESSMENT ORDER

NO.32070272872/2010-11 (4/2010) DATED 14.6.2010.

ANNEXURE C TRUE COPY OF THE COMMON APPELLATE ORDER

KVATA NO.2468/2010 AND KVATA NO.1402/2011 DATED 10.10.2012. ANNEXURE D TRUE COPY OF THE COMMON ORDER IN VAT T.A.NOS.1562/2011 AND VAT T.A.NO.1563/2011 DATED 19.11.2012 ISSUED BY THE HONOURABLE TRIBUNAL, ERNAKULAM.

ANNEXURE E TRUE COPY OF THE GROUNDS OF APPEAL FOR THE YEAR 2010-11 FILED BEFORE THE KVAT TRIBUNAL, ERNAKULAM. ANNEXURE F TRUE COPY OF THE COMMON ORDER IN R.P.1/2013 AND 2/2013 DATED 13.5.2013. ANNEXURE G TRUE COPY OF THE STATEMENT OF TAXES FOR THE RELEVANT PERIOD. ANNEXURE H TRUE COPY OF THE CER TIFICATE ISSUED BY CUSTOMS AUTHORITIES.