The State of Kerala vs M/S. B.V.Bio - Corp (P) Ltd,

The State of Kerala vs M/S. B.V.Bio - Corp (P) Ltd,

SooperKanoon Citation : sooperkanoon.com/1440595

Court : Kerala

Decided On : Nov-01-2022

Judge : Honourable Mr.Justice S.V.Bhatti,Honourable Mr.Justice Basant Balaji

Appeal No. : OT.Rev/1/2019

Appellant : The State of Kerala

Respondent : M/S. B.V.Bio - Corp (P) Ltd,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE BASANT BALAJI TUESDAY, THE 1ST DAY OF NOVEMBER 2022 / 10TH KARTHIKA, 1944 OT.REV NO. 1 OF 2019 AGAINST THE ORDER TAVAT 63/2018 OF VALUE ADDED TAX APPELLATE TRIBUNAL,ADDITIONAL BENCH,PKD REVISION PETITIONER/S: THE STATE OF KERALA, REPRESENTED BY THE DEPUTY COMMISSIONER OF STATE TAX (LAW), STATE GOODS AND SERVICE TAX DEPARTMENT, ERNAKULAM - 11. BY SR GOVERNMENT PLEADER V K SHAMSUDHEEN RESPONDENT/S: M/S. B.V.BIO - CORP (P) LTD, DHONI, PALAKKAD, PIN - 678 009. BY ADVS. SRI.N.MURALEEDHARAN NAIR SRI.S.JAFFERALI THIS

OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 01.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

ORDER

S.V. Bhatti, J.

The Department is challenging the order dated 05.05.2018 in TA (VAT) No.63/2018 of the Kerala Value Added Tax, Additional Appellate Tribunal, Palakkad. The Tribunal, after appreciating the central issue in the controversy between parties, recorded the following findings:

> 1. The only issue is that goods received had been disposed at a price lesser by 4,24,731/- (Rupees four lakhs twenty four thousand seven hundred and thirty one only). The assessing authority has sought to levy tax on the same placing reliance on explanation V and VII to section 2(lii) of KVAT. Prima facie analysis of the situation reveals that these two explanations are not attracted in the given situation.

2. The case of the appellant is that the reduction of sales price was caused since the goods received by Stock Transfer

(IN) from Head Office were sold at a price lesser than at which they were consigned (IN), under instructions of the principal, their Head Office. Copy of the communications to that effect -3- issued by the Head Office is produced. The appellant has also produced the copy of stock transfer note 'IN' and sales invoices to prove the above claim.

3. The Honourable High Court of Allahabad in Commissioner, Sales Tax, UP vs Sourashtra Chemicals [(1996) 100 STC 448], has

held that accounts cannot be rejected merely because the sale

price was less than the value of the goods calculated at the rate on which the goods were received from the H.O, that if the assessee thought it proper in order to promote the sales or to push its product in the market to allow trade discount of varying amounts to its customers depending upon the market conditions and other relevant factors the Revenue cannot legally object to it and that if the returns would be substantiated and the figures disclosed therein are verifiable from the account books in which no defect is noted the assessing authority is not legally empowered to reject the account version and to proceed to make assessment on best

judgement in disregard of the account books and the disclosed

results.

4. It is the case of the appellant that in this case the Head

Office had given specific instructions to allow discounts as 'Special Rates' and this allowance has resulted in the sale figure becoming lesser than the transfer value. -4-

Hence it is only just and reasonable that appellant is given an opportunity to appear before the assessing authority and furnish the split details of goods sold at reduced price and its corresponding receipt, within one month of the receipt of this order, and if produced the Assessing Authority shall verify the same and delete the addition to the extent proved and modify the assessment accordingly. In the result the appeal is allowed in part and the Assessing Authority is directed to modify the assessment as directed above. It is made clear that the appellant shall appear and produce evidence before the assessing authority within one month of the receipt of this order, failing which the original

order shall stand restored.

2. The Tribunal, as noted above, felt that for carrying

out or giving effect to the conclusions recorded by the Tribunal, the matter needs to be remitted to the Assessing Officer. Hence remanded the matter. The Department substantially questions the order of remand.

3. To cut the long narrative short, we have excerpted

the very findings which convinced the Tribunal to remand the -5- matter to the Assessing Officer. We have perused the grounds stated in the revision and take note of the Rules on the very same lines. We are convinced that the remand of the matter was found by the Tribunal for the correct reasons. The grounds raised do not come within the scope of Section 63 of the Kerala Value-Added Tax Act. If we now take up the argument made on merits and decide the issue, then it will affect one party or the other in the remand. Hence, we are, while confirming the findings of the Tribunal, refraining from considering other ancillary grounds raised by the Department in the revision. Revision fails. Hence, dismissed. Sd/- S.V.BHATTI JUDGE Sd/- BASANT BALAJI JUDGE jjj -6- APPENDIX OF OT.REV 1/2019 PETITIONER ANNEXURES ANNEXURE A TRUE COPY OF THE ASSESSMENT ORDER DATED 29.08.2016 ANNEXURE B TRUE COPY OF THE 1ST APPELLATE ORDER DATED 28.11.2017 ANNEXURE C CERTIFIED COPY OF THE ORDER OF THE TRIBUNAL DATED 05.05.2018