

The State of Kerala vs V.Krishnakumar,

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Court : Kerala

Decided On : Aug-10-2022

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

Appeal No. : OT.Rev/11/2021

Appellant : The State of Kerala

Respondent : V.Krishnakumar,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE BASANT BALAJI WEDNESDAY, THE 10TH DAY OF AUGUST 2022 / 19TH SRAVANA, 1944 OTHER TAX REVISION CASE NO.11 OF 2021 (AGAINST THE ORDER DATED 22.05.2020 IN T.A.(VAT)No.284/2016 OF KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM) REVISION PETITIONER/RESPONDENT/REVENUE: THE STATE OF KERALA, REPRESENTED BY THE JOINT COMMISSIONER OF STATE TAX

(LAW) DEPARTMENT OF KERALA STATE GOODS AND SERVICE TAX, ERNAKULAM. BY ADV GOVERNMENT PLEADER

RESPONDENT/APPELLANT/ASSESSEE: V.KRISHNAKUMAR, DOOR NO.IX/37A, KRISHNALAYAM, LIBRARY ROAD, ALUVA. BY ADVS. SHRI.K.N.SREEKUMARAN SRI.P.J.ANILKUMAR (A-1768) THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 10.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

(Dated: 10th August, 2022) Basant Balaji, J

The revenue has filed this tax revision against the order of the Kerala Value Added Tax Appellate Tribunal, Additional Bench, Ernakulam as TA(VAT)No.284 of 2016. The respondent is an unregistered dealer. On 30.12.2013, the Intelligence Officer, Squad No.1, Ernakulam, inspected the business premises of the respondent and prepared SIR No.224317 dated 30.12.2013. On verification of the books brought into light that there are irregularities and the dealer has effected unaccounted sales of perfumery compounds for Rs.79,11,771/- during 2013-14. He compounded the offence on payment of a sum of Rs.4,00,000/- towards compounding fee, Tax of Rs.3,95,589/- and registration fee of Rs.3,500/-.

2. After receiving the crime file, the

assessment was completed under Section 25(1) of the KVAT Act (the Act for short), for the years 2013-14. The assessment was completed and proceedings were issued on 30.07.2015 by the Commercial Tax Officer, Aluva. The respondent challenged the proceedings of the Commercial Tax Officer before the Deputy Commissioner (Appeals) I, Commercial Taxes, Ernakulam, as First Appeal No.KVATA No.1753 of 2015. The First Appellate Authority dismissed the appeal, holding that the assessment needs no interference and the grounds raised are devoid of merits. The assessee thereafter filed an appeal before the Kerala

Value Added Tax Appellate Tribunal, Additional Bench, Ernakulam, and the same was numbered as TA (VAT) No.284 of 2016. The Tribunal on assessment of the case put forward by the respondent allowed the appeal in part and reduced the

rate of tax from 14.5% to 5%. Aggrieved by this order

of the Tribunal, the revenue is in appeal.

3. Following questions of law had been raised in this appeal:

1. Whether on the facts and circumstances of the

case, the Appellate Tribunal has erred in law directing the assessing authority to modify the Annexure A assessment order by reducing the further addition to 50% of suppressed turnover particularly considering the fact that the respondent has no registration at all which is against the provisions of KVAT Act and Rules?

2. Whether Tribunal failed to appreciate the actual rate of tax applicable to the commodity of the respondent?

3. Whether Tribunal erred in law in considering section 94 clarification order issued by the Commissioner Order No.C3.26401/2008 dated 17.10.2008 which is not at all applicable to the present case?

4. Whether on the facts and circumstances of the case, Annexure C order passed by the Appellate Tribunal is liable to be cancelled?

4. Heard Sri.V.K.Shamsudheen, learned Senior Government Pleader for the revision petitioner and Sri.V.Krishnakumar, learned counsel for the respondent/appellant.

5. The main contention raised by the learned

Government Pleader is that the Tribunal was wrong in reducing the rate of tax from 14.5% to 5% and the same is without any reason. Moreover, with the addition of two times, the suppressed turnover was also limited to 50% of the suppressed turnover by the Tribunal. Learned Senior Government Pleader also contended that the dealer effected the unaccounted sale of perfumery compounds for Rs.79,11,771/- during 2013-14 and he has not registered under the Act, thus committed an offence though he has compounded the offence by paying a sum of Rs.4,00,000/- and proceedings under Section 25(1) of the KVAT Act, 2003 were issued to the dealer proposing additional two times of the probable omission suppression with sales turnover detected by the intelligence wing. The Intelligence Officer has rightly ordered two times the probable omission and suppression. Moreover, the rate of tax applicable is 14.5% as the commodity is clearly stated in the schedule of the rates of commodities shown on the website of the Government of Kerala, Commercial Taxes. Hence, he prayed that the appeal be allowed and the

order of the Tribunal be set aside.

6. The learned counsel for the respondent on

the other hand submitted that the Tribunal was justified in reducing the addition of two times suppressed turnover as excessive and arbitrary and limited the same to 50%. Moreover, the Tribunal relied on the clarification issued by the Commissioner under Section 94 of the Act and held that the rate of tax applicable is only 5% and not 14.5%.

7. The appellants place of business was

inspected by the Intelligence Officer and found that there are unaccounted sales of perfumery compounds during the year 2013-14, totalling Rs.79,11,771/- and that the assessee has not taken registration

under the Act. The offence was compounded on payment of Rs.4,00,000/-, which included tax amounting Rs.3,95,589/- and registration amounting to Rs.3,500/-. The Intelligence Officer found that the rate of tax applicable to the product is 5% as the commodity falls under serial N0.91 A of List A of the 3rd schedule with HSN Code 3302.90.11, but the proceedings under Section 25 were invoked and the assessing officer had taken the rate of tax as 14.5% for the reason that the website of the Government of Kerala, Taxes Department shows that for perfumery compounds containing spirits, the rate of tax should be 14.5%. We are of the view that the said finding was interdicted by the Tribunal and held that the intelligence officer ought to have taken note of the clarification issued by the Commissioner under Section 94 of the Act, which prescribes that for synthetic perfume compounds, the entry is Sl. No.91 A of List A and the tax has to be at the rate of 4%. The Tribunal also found on facts that the addition of two times suppressed turnover is excessive and arbitrary.

On going through the order of the Tribunal, we find that the Tribunal was justified in reducing the addition of two times suppressed turnover to 50% suppressed turnover and that the rate applicable is 5%, not 14.5%, in view of the clarification issued by the Commissioner and also due to the fact that the intelligence officer had found that the rate of tax applicable is 5%. Therefore, we find no reason to interfere with the order of the Tribunal and the substantial questions of law raised are found against the revenue, hence the O.T.Revision is dismissed.

Sd/- S.V.BHATTI, JUDGE Sd/- BASANT BALAJI, JUDGE ss APPENDIX OF OT.REV 11/2021 PETITIONER ANNEXURES: ANNEXURE A TRUE COPY OF THE ASSESSMENT ORDER DATED 30.7.2015 FOR THE ASSESSMENT YEAR 2013-14. ANNEXURE B TRUE COPY OF THE 1ST APPELLATE ORDER DATED 22.7.2016 PASSED BY THE DEPUTY COMMISSIONER (APPEALS) I, COMMERCIAL TAXES, ERNAKULAM IN KVAT NO.1753/2015. ANNEXURE C CERTIFIED COPY OF THE ORDER PASSED BY THE APPELLATE TRIBUNAL

IN TA(VAT) NO.284/2016 DATED 22.5.2020.

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