
(2010) 03 KL CK 0001
In the High Court Of Kerala
Case No : O.T. Rev. No. 20 of 2010

Chandra Interiors

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 6(7)

Citation : (2011) 44 VST 100

Hon'ble Judges : P.S. Gopinathan, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : S. Vinod Bhat, for the Appellant; Mohammed Rafiq, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised in this tax revision case is whether the Tribunal was justified in confirming disallowance of exemption on sales made by the petitioner to an industrial unit in the Special Economic Zone, Kakkanad, u/s 6(7) of the Kerala Value Added Tax Act. We have heard counsel appearing for the petitioner and Government Pleader for the respondent. The petitioner started business including supply of materials to one industrial unit in the Special Economic Zone in the year 2006. However, no registration was taken under the KVAT Act until January 22, 2009 when regular registration was obtained by the petitioner. The purchaser in the Special Economic Zone gave form No. 43 prescribed under rule 12C of the Act for the petitioner to claim exemption on the supplies made to it. However, exemption was declined for the reason that during the relevant period when supplies were made, petitioner was not a registered dealer under the KVAT Act. The assessment got confirmed in two level appeals and against the order of the Tribunal, this revision case is filed by the petitioner.

2. After hearing both sides and on going through the orders of the lower authorities including that of the Tribunal, we find that the form prescribed indicates that the supplier should also be a registered dealer, because TIN

number of the registered dealer is required to be incorporated in the declaration to be issued by the purchasing industrial unit. However, there is nothing to indicate in the provisions of section 6(7) or in rule 12C that in order to grant exemption the supplier should be a registered dealer at the time of making supply. In this case, though with a delay the petitioner obtained registration under the KVAT Act on January 22, 2009. Since the benefit of exemption goes to the purchasing industrial unit, we feel exemption should not be declined to the petitioner on the technical ground that the petitioner had not taken registration at the time of making sales to the industrial unit. However, the question as to whether the items purchased fall within the scope of section 6(7) and other related matters need not be gone into by us because the same could be considered by the assessing officer. Further, the petitioner itself has claimed only partial exemption and so much so whatever turnover that was not exempted should be assessed at the hands of the petitioner, no matter petitioner had no registration during the year 2006-07 to which revision case relates. We therefore allow the revision case by setting aside the order of the Tribunal and that of the lower authorities and remand the matter to the assessing officer for considering exemption on the merits. We make it clear that the exemption on sales to industrial unit in the Special Economic Zone should not be denied merely for want of registration at the time of sales. The petitioner will produce documents, evidence and declaration pertaining to sales before the assessing officer for him to consider the matter and make revised assessment, which he is directed to make within a period of two months from the date of receipt of a copy of this judgment.