**(2013) 07 KL CK 0137**

**In the High Court Of Kerala**

**Case No :** O.T.A. No''s. 9, 11 and 12 of 2012

India Motor Parts and Accessories Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

**Date of Decision :** 03-07-2013

**Acts Referred:**

Kerala Value Added Tax Act, 2003 — Section 6, 6(1), 94

**Citation :** (2013) 3 KHC 256 : (2013) 3 KLT 496

**Hon'ble Judges :** Thottathil B. Radhakrishnan, J;Mathew P. Joseph, J

**Bench :** Division Bench

**Advocate :** A. Kumar, S. Anil Kumar Trivandrum, K.S. Hariharan Nair, K. Umamaheswar, K.U. Vijayan and K.N. Sreekumaran, for the Appellant; Bobby Joseph, Government Pleader, for the Respondent

## Judgement

Thottathil B. Radhakrishnan, J.—These appeals are by automobile spare part dealers registered under the Kerala Value Added Tax Act, 2003, for short, "K.V.A.T. Act". They trade in automobile spare parts, nuts, bolts etc. They challenge Order No. C7.37542/06/CT dated 14.12.2006 issued by the Commissioner of Commercial Taxes under S. 94 of the K.V.A.T. Act clarifying that "Nut, Bolt and Screws made of Iron and steel, used as spare parts of motor vehicles" arc classifiable under H.S.N. 8708, and hence, will fall under Entry 67(7) of S.R.O. 82/06. The contention is on the ground that the afore-noted items would fall under the specific entry 3(8)(h) of the Third Schedule to the K.V.A.T. Act. The appellants accordingly challenge the Commissioner''s clarification that such goods would fall under Sl. No. 67(7) of S.R.O. 82/06 and would attract tax at 12.5%, the prescribed rate as at the relevant point of time. They also contend that the Commissioner of Commercial Tax has overlooked the Rules of Interpretation of Schedules appended to the K.V.A.T. Act, as also the General Rules for the Interpretation provided in the First Schedule to the Customs Tariff Act, 1975; for short, ''Tariff Act"; while interpreting Sl. No. 67(7) of S.R.O. 82/06 even with out referring to Entry 3(8)(h)of the Third Schedule to the K.V.A.T. Act. The learned counsel appearing for the appellants, making reference to the provisions of S. 6(1) of the K.V.A.T. Act, argued that the obligatory Rules of Interpretation have been totally ignored by the Commissioner. Reckitt Benckiser (India) Ltd, v. Commissioner, Commercial Taxes (2008 (2) KLT 604 (SC) : (2008) 15 VST 10 (SC)) was also cited as a binding precedent.

2. Per contra, the learned Government Pleader argued that the commissioner has acted well in conformity with S. 94 of the K.V.A.T. Act and the settled principles governing such power and hence the impugned order does not warrant interference by this Court in appeal. He pointedly argued that the Commissioner decided the question on the basis of materials and the same does not warrant interference. It is further pointed out that even in terms of the Rules of Interpretation, goods which cannot be classified in accordance with the Rules, is to be classified order the heading "appropriate to the goods to which they are most akin".

3. Under S. 6 of the K.V.A.T. Act, goods specified in the Second and Third Schedules thereto are charged to duty at the rates specified therein whereas goods not falling within those two Schedules are assessable to duty under separate notifications to be issued by the State Government. The Rules of Interpretation require that in cases where Harmonised System of Nomenclature (H.S.N.) code number is indicated against the tariff item mentioned in the Third Schedule; then, one has to go by the provisions of the H.S.N., as adopted by the Tariff Act. As held in Reckitt Benckiser (India) Ltd. (supra), if that means so, one needs to interpret the entries in the Third Schedule; not only in the light of the entries in the Tariff Act; but also the judgments applicable to the corresponding entries in the Tariff Act. In that binding precedent, it was also noted that advance clarificatory order issued under S. 94 of the K.V.A.T. Act is very similar to advance ruling under the income tax Act. That precedent is authority for the position that the Rules of Interpretation of the schedules to the K.V.A.T. Act are decisive and the K.V.A.T. Act is aligned with customs tariff which, in turn, is aligned with H.S.N. and consequently, each product in question was required to be seen in the context of H.S.N. code and judgments based thereon.

4. The consideration of the matter by the Commissioner, as evidenced by the impugned order dated 14.12.2006, does not reflect advertence to the Third Schedule of the K.V.A.T. Act. Not only that, the Rules of Interpretation do not appear to have been looked into, for appropriate application as may be necessary. It may be noted that the dealers have the specific case that the articles "nut, bolt and screws" cannot be brought under S.R.O. 82/06 and that it can not fall under the Third Schedule to the K.V.A.T. Act. These are matters on which the authority under S. 94 of the K.V.A.T. Act has to express, in the first instance. Now, reverting to S. 94 of the K.V.A.T. Act, it can be seen that sub-section (2) of that section provides that the authority shall decide the question after giving the parties to the dispute a reasonable opportunity to put forward their case and produce evidence, when consideration of evidence and hearing of parties are contemplated, the exercise of such power should be coupled with

 

expression of the reasons, dependent upon the facts and materials available. The impugned order does not disclose the reasoning process by which the Commissioner had concluded that the goods fall under S.R.O. 82/06.

For the aforesaid reasons, these appeals are allowed setting aside the impugned Order No. C7.37542/06/CT dated 14.12.2006 and requiring the competent authority in terms of S. 94 of the K.V.A.T. Act to decide the matter de novo, after following the rule of notice and hearing, as prescribed in S. 94 of that Act.