

(2011) 09 KL CK 0041
In the High Court Of Kerala
Case No : O.T. Rev. No. 54 of 2009

Kalliyath Steels (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 11, 11(13), 6

Citation : (2012) 55 VST 142

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

Bench : Division Bench

Advocate : K. Srikumar, K. Manoj Chandran and P.R. Ajith kumar, for the Appellant; V.K. Shamsudheen, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The short question arising for consideration in the tax revision case filed by the assessee is whether the Tribunal was justified in confirming disallowance of input tax credit claimed on opening stock held on the first day of the assessment year 2005-06. We have heard learned counsel appearing for the petitioner/assessee and learned Government Pleader appearing for the respondent, and have gone through the orders of the lower authorities including that of the Tribunal.

2. The value added tax regime was introduced in the State from April 1, 2005 onwards. Under the scheme of levy of tax under the Kerala Value Added Tax Act, registered dealers are entitled to input tax credit and the liability to pay tax is output tax as reduced by the input tax paid on purchases, which is allowed as credit. Admittedly, the assessee is entitled to input tax credit on the opening stock held on April 1, 2005 which has suffered tax on the purchases made under the Kerala General Sales Tax Act. However, in order to be entitled for the benefit of input tax credit availed of on the opening stock the assessee was bound to reduce the sales tax from the value added tax collected on sales made. In other words, the condition for allowing input tax credit on sales tax paid on opening

stock is that it should be passed on to the consumers or the dealers to whom goods are sold. However, if the credit of input tax availed of on the opening stock is not passed on as above, then such amount will be demanded as if it is reverse tax in terms of the second proviso to section 11(13) of the Kerala Value Added Tax Act.

3. In the course of assessment for 2005-06, the assessing officer noticed that the assessee showed an unusually huge opening stock for the year, which was above Rs. 1.60 crores, whereas the opening stock for the previous year 2004-05 was only 25 per cent of this amount. The assessee, however, explained the unusual closing stock on March 31, 2005 which happens to be the opening stock for the year 2005-06 by contending that huge bank advance was taken and the same was fully utilised for purchase of goods. After accepting this contention, the assessing officer proceeded to consider the gross profit obtained by the assessee on the sales made for the first month of the year in which the value added tax regime applies to the assessee. It was noticed that the average gross profit obtained by the assessee was 4.88 per cent and even the conceded profit itself for the month of April, 2005 was 4.46 per cent. The assessing officer noticed that for subsequent months rate of profit came down much lower than this, which is without any explanation. The conclusion, after verifying the audit statement filed in Form 25A and after analysing the sales accounted for April and subsequent periods is that the assessee in fact did not pass on the sales tax to the customers in respect of which input tax credit was availed of on the opening stock. In other words, the finding is that the high percentage of gross profit obtained for April is due to the inclusion of sales tax paid on the purchases in the sales price collected by the petitioner with tax payable under the Kerala Value Added Tax Act. So much so, the clear finding is that in violation of the condition for availing of input tax credit, the assessee while charging tax u/s 6 of the Kerala Value Added Tax Act did not give set off of tax paid on purchases under the Kerala General Sales Tax Act. This situation is squarely covered by the second proviso to section 11(13) of the Kerala Value Added Tax Act and accordingly the amount of input tax credit availed of on the opening stock was demanded as reverse tax due under sub-section (7) of section 11 of the Kerala Value Added Tax Act. It is this order which is confirmed in two level appeals by the Deputy Commissioner (Appeals) and by the Tribunal. After hearing both sides what we notice is that the findings based on which disallowance was confirmed by the Tribunal are only on findings of fact based on accounts and audit statement filed in Form 25A, wherein from the gross profit accounted it was clearly established beyond doubt that the assessee had not passed on to the customers the sales tax paid on purchases of goods held as opening stock in respect of which input tax credit was availed of by the assessee. Since the tax paid on purchases was also recovered from the buyers along with tax payable u/s 6 of the Kerala Value Added Tax Act, the input tax credit on opening stock is rightly demanded as reverse tax in terms of the second proviso to section 11(13) of the Kerala Value Added Tax Act read with sub-section (7) thereto. We notice that the demand is made under the

statutory provisions based on the findings of facts with regard to the failure of the assessee to pass on the input tax credit availed of to the buyers/customers. Consequently, we see no merit in the O.T., Revision case and the same is accordingly dismissed.