(2012) 02 KL CK 0098

In the High Court Of Kerala

Case No : OT. Rev. No. 21 of 2012

M/s. Asian Paints Ltd. Chakkaraparambu, Ernakulam — APPELLANT

Vs

The State of Kerala — RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Central Sales Tax (Kerala) Rules, 1957 — Rule 5A
Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12(5)
Central Sales Tax Act, 1956 — Section 18(A), 6A, 6A(1), 6A(2), 6A(3)
Finance Act, 2010 — Section 18A
Kerala Value Added Tax Act, 2003 — Section 60(4), 60(7), 63

Citation : (2012) 02 KL CK 0098

Hon'ble Judges : C.N. Ramachandran Nair, J;Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : K. Latha, for the Appellant; Bobby John, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran Nair, J.—This revision petition is filed u/s 63 of the Kerala Value Added Tax Act, 2003 (hereinafter called as the KVAT Act for short) against the order of the Tribunal dismissing the first appeal filed before it u/s 18A of the Central Sales Tax Act, 1956 (hereinafter called as the CST Act for short) as not maintainable.

2. We have heard learned counsel appearing for the petitioner and learned Government Pleader for the State.

3. The petitioner is a leading paint manufacturing company, which has a sales division in Kerala. In the course of assessment under the KVAT Act for the year 2009-2010, the Assessing Officer declined exemption claimed on stock transfer for the reason that there is no proof of transfer of goods from Kerala to outside State and based on the same assessment is made on such turnover under the KVAT Act. The petitioner has a right of first appeal under the KVAT Act against

the assessment before the Deputy Commissioner (Appeals). However since exemption claimed was u/s 6A of the CST Act and assessment though made under the KVAT Act was after making disallowance of such claim of exemption, the petitioner filed first appeal before the Tribunal u/s 18A of the CST Act. When the appeal was taken up by the Tribunal, the State representative challenged the maintainability, which was upheld by the Tribunal. It is against this order of the Tribunal, this revision is filed by the petitioner u/s 63 of the KVAT Act.

4. Today when the matter came up for admission, learned Government Pleader appearing for the respondent challenged the maintainability of the revision before this Court because Section 63 provides for filing of revision against the orders of the Tribunal passed under sub sections (4) & (7) of Section 60 of the KVAT Act. We have already in the decisions in Solar Cashew Vs. State of Kerala, and in Balakrishnan Nair v. State of Kerala, reported in 2007 (2) KLT Short Note, Page-16 (C.No. 24), held that revision to the High Court is maintainable only against orders in appeals on merit or against orders in review applications filed against appellate orders, passed by the Tribunal. The position is exactly the same in this case and so much so, the revision itself is not maintainable. Even though the revision has to be dismissed on this sold ground, we feel scope of Section 18A of the CST Act requires to be considered for guidance to assessees, the department and also to the Tribunal.

5. Section 6A of the CST Act casts burden on the assesses to prove exemption claimed on stock transfers with all required evidence. Goods transferred from one State to another are either under contract of sale or as stock-transfer which could be to the outside State Branch of the Dealer or to the consignment agent appointed by the dealer in such State. u/s 6A of the CST Act, a dealer claiming exemption on stock transfer of goods made to another State should prove that such transfer was not under contract of sale. Rule 12(5) of the CST (R & T) Rules prescribe form F as the form required to be produced for claiming exemption on stock transfer u/s 6A of the CST Act. However, it is a settled position that mere production of form F is not sufficient to prove exemption on stock transfer. For claiming exemption u/s 6A it is for the dealer to prove with required evidence that the goods have moved from one State to another and it is only along with such evidence the dealer has to produce form F and other details regarding consignment agency or Branch to which transfer is made. The details required for proving consignment transfers are covered by Rule 5A of the CST (Kerala) Rules. So much so, when exemption is claimed on stock transfer of goods by producing form F, it is open to the Assessing Officer to call for the particulars of transport of goods such as lorry receipt, railway receipt or such other transport document, which in the course of road transport will contain even border check post seal, and only if physical transfer of goods from one State to another is proved, there is the need to examine the acceptability of C form declaration filed. In other words, physical transfer of goods from one State to another is a matter which should be proved for granting exemption u/s 6A. A situation may arise when the dealer proves transfer of goods from one State to another but without producing

form F or evidence in support of actual transaction like transfer to Branches or to consignment agents etc. In such case, disallowance happens u/s 6A and assessment has to be made treating the transaction as interstate sale by virtue of the presumption available u/s 6A(1) of the CST Act. On the other hand, if the dealer fails to prove movement of goods from one State to another, the transaction will be assessed as local sale, irrespective of whether C-form was produced or not. Such assessment will be under the local Sales Tax Act or under the VAT Act depending on under which Act, the sale of such goods are taxable. The petitioner in this case failed to prove transfer of goods from one State to another with transport document, and therefore the Assessing Officer made assessment under the KVAT Act, and so much so, the remedy available is only by way of first appeal against the assessment before the first appellate authority.

6. Section 18A of the CST Act introduced by Finance Act, 2010 provides for first appeal to the highest appellate authority in the State against the orders issued under sub Sections (2) & (3) of Section 6A of the CST Act. While sub Section (2) provides for assessment after disallowing exemption u/s 6A, sub section (3) of Section 6A provides for reassessment by the Assessing Officer himself to withdraw exemption wrongly granted in original assessment and the said sub Section also authorises the higher authority to revise a wrong order of exemption on stock transfer granted by the Assessing Officer. In both the sub Sections, the assessment contemplated is only CST assessment after disallowing exemption claimed on stock transfer. As already stated assessment under sub Section (2) or (3) is possible only if physical transfer of goods from one State to another is proved and the assessment contemplated is as a result of dealer''s failure to prove the transfer of goods from one State to another as not under contract of sale. In other words, when goods transferred from one State to another is not proved to have been made to Branch of the dealer or to consignment agent or the like other than under sale, then form F gets rejected, and consequently, assessment follows under the CST Act. It is against such CST assessment first appeal u/s 18A of the CST Act will lie before the Tribunal. However, if assessment made is under the KVAT Act after making disallowance u/s 6A of the CST Act for the reason that physical transfer of goods from one State to another is not proved then no appeal will lie to Tribunal u/s 18A of the CST Act.

For the reasons stated above, we dismiss the Revision Case. However we feel since the petitioner has wasted time in filing this revision, that is found to be not maintainable, we grant three weeks'' time for the petitioner to file first appeal against the assessment. There will be direction to the Tribunal to return the original assessment order for production in first appeal by the petitioner. We direct the Assessing Officer to withhold recovery for three weeks from today for the petitioner to file appeal and move for stay before the first appellate authority.

