(2012) 08 KL CK 0035

In the High Court Of Kerala

Case No : O.T. Rev. No. 58 of 2012

P.K. Abdul Majeed, Prop. Ms. Feroke Iron Traders, Cheruvannoor, Kozhikode — APPELLANT

Vs

The Commercial Tax Officer, 3rd Circle, Kozhikode, The Deputy Commissioner (Appeals) Kozhikode and Kerala Value Added Tax Appellate Tribunal Ernakulam - 682015 — RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 22, 6(1)(d)

Citation : (2012) 08 KL CK 0035

Hon'ble Judges : Thottathil B. Radhakrishnan, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : Premjit Nagendran and Sri. P. Raghunath, for the Appellant; Bobby John, Government Pleader, for the Respondent

Judgement

K. Vinod Chandran, J.—The assessee, a dealer registered under the Kerala Value Added Tax Act, 2003, hereinafter referred to as "the Act", is before us challenging the assessment made u/s 22 of the Act. On verification of the monthly returns, for the months of June and July 2009, the rate of tax applied on sale of transformer oil was returned as 4% which, according to the Assessing Officer, should have been 12.5%. Notice was issued u/s 22 of the Act and such sale of inedible oil, viz., transformer oil, was assessed at the rate of 12.5%. The dealer''s contention that it had infact purchased used transformer oil from the Kerala State Electricity Board at the rate of 4% and effected sale of the very same goods was rejected by the Assessing Officer. The first appeal and the appeal before the Tribunal also were futile.

2. The assessee, before the lower appellate authorities as also before us, relied on Annexure II document issued by the Kerala State Electricity Board. In our opinion, the said document is totally irrelevant and the understanding of the Board with respect to the taxing aspect of the goods sold by it is misconceived, going by the provisions of the Act. We do not say anything more, since it is not

the Board''s sale which is the subject matter of this revision. The Tribunal has considered the contentions of the assessee exhaustively. The fact that the goods purchased by the assessee suffered tax at the rate of 4% cannot at all decide the rate of tax applicable to the goods conclusively. The assessee, going by the Tribunal''s order, raised a specific contention that the used transformer oil is to be considered as "crude oil" coming under Entry 32 of the Third Schedule to the Act, taxable at 4%. The Tribunal has extracted Entry 32 of the Third Schedule to the Act as also the relevant paragraph in the Rules of Interpretation of the Schedules to hold that the transformer oil dealt with by the assessee, being used transformer oil, cannot be considered as "crude oil" coming within Entry 32, the contours of which is defined by the Rules of Interpretation. We are in perfect agreement with the findings of the Tribunal. The finding of the Tribunal that the used transformer oil sold by the assessee is taxable u/s 6(1)(d) of the Act is perfectly in order and the questions of law raised by the assessee in the above revision are answered in favour of the Revenue and against the assessee. The Other Tax Revision, hence, stands rejected.

