IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

OT.Rev.No. 60 of 2012 ()
------------------------

AGAINST THE ORDER IN TA(VAT) Nos.745/11, 747/11, 748/11, 749/11, 750/11 & 751/11 of KERALA VALUE ADDED APPELLATE TRIBUNAL, ERNAKULAM DATED 30-03-2012

REVISION PETITIONER/RESPONDENT/REVENUE:
---------------------------------------------------------------------------

STATE OF KERALA
REP.BY DEPUTY COMMISSIONER(LAW)COMMERCIAL TAXES
ERNAKULAM

BY SENIOR GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

RESPONDENT/APPELLANT/ASSESSEE:
---------------------------------------------------------

M/S.MONIER ROOTING (P) LTD.
FEROKE, KOZHIKODE. PIN:673 631.

R1 BY ADV. SRI.R.RAMADAS
R1 BY ADV. SMT.REVATHY P.NAIR
R1 BY ADV. SRI.C.S.ARUN SHANKAR

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 01-07-2015, ALONG WITH OTRV. 70/2012, 77/2012, 81/2012, 84/2012, 88/2012 & 99/2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OT.Rev.No. 60 of 2012

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: (TRUE COPY OF THE ASSESSMENT ORDER DATED 20.08.09) **TRUE COPY OF THE ASSESSMENT ORDER UNDER KVAT ACT FOR THE YEAR 2005-2006 DATED 21.05.2009 - SUBSITUTTED AS PER ORDER DATED 02.12.2013 IN I.A.2322/12.

ANNEXURE B: A TRUE COPY OF THE ORDER OF THE DEPUTY COMMISSIONER (APPEALS) DATED 30.09.2010.

ANNEXURE C: A TRUE COPY OF THE ORDER OF THE TRIBUNAL DATED 30.3.2012 IN T.A.(VAT) NO.745/2011.

RESPONDENT'S ANNEXURES :  NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**ANTONY DOMINIC**
**&**
**SHAJI P. CHALY, JJ.**
---------------------------------------------
**O.T.Rev(VAT) Nos.60, 70, 77, 81**
**84, 88 & 99 of 2012.**
---------------------------------------------
**Dated this the 1st day of July, 2015**

**ORDER**

**Antony Dominic,J.**

These revision petitions are filed by the Revenue challenging the order passed by the Kerala Value Added Tax Appellate Tribunal, Ernakulam allowing the appeals filed by the respondent assessee. The assessee is a dealer in glazed roofing tiles.

2. Assessment under the KVAT Act for the years 2005-2006, 2006-2007, 2007-2008 and April - 2009 were completed by the assessing officer applying 12.5% as the rate of tax on the product in question. This was against the claim of the assessee that the rate of tax applicable was 4%, the product being kiln burnt roofing tile included at Sl.No.18(1) (c) of the Third Schedule to the KVAT Act. Similarly the assessments under the CST Act, for the assessment years 2005-2006, 2006-2007 and

2007-2008, were also completed, levying tax at the rate of 12.5% as against the claim of the assessee that the applicable rate was only 4%. The orders of assessment were upheld by the first appellate authority, but however, the Tribunal allowed the appeals of the assessee, upholding the contention that the product in question is being kiln burnt roofing tile the rate of tax is only 4% under CST and KVAT Acts. It is challenging this common order, the Revenue has filed these revisions, among which OTR Nos.60 of 2012, 81 of 2012, 99 of 2012 and 77 of 2012 are against the orders under the KVAT Act concerning the period 2005-2006, 2006-2007, 2007-2008 and April - 2009, respectively. Similarly OTR Nos.70 of 2012, 88 of 2012 and 84 of 2012 are filed challenging the orders of assessment under the KVAT Act for the years 2005-2006, 2006-2007 and 2007-2008, respectively.

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

3. The short question that arises for consideration is whether the rate of tax applicable to glazed roofing tiles is the

rate of tax specified under item 18(1)(c) of the Third Schedule to the KVAT Act, for the product kiln burnt roofing tiles.

4. According to the learned Government Pleader, the assessee purchases kiln burnt roofing tiles and after subjecting it to a mechanical process involving colouring and heating, manufactures the product - glazed roofing tiles. This, according to him, is a commercially different product which is not specifically enumerated in the Third Schedule and therefore, is attracting 12.5% tax under the residuary entry.

5. On the other hand, learned counsel for the respondent contends that though the assessee purchases tiles as claimed by the learned Government Pleader, the process involved is chemical quoting and that even thereafter, the product remains as kiln burnt roofing tiles. On this basis, counsel contended that the rate of tax applicable is as held by the Tribunal.

6. We have considered the submissions made. Entry 18(1)(c) of the Third Schedule is kiln burnt roofing tiles. It is true that glazed roofing tiles does not find a place anywhere in the Third Schedule and if the product in question is held to be different from kiln burnt roofing tile, tax as specified in the residuary

clause would be attracted. In such circumstances, the question is whether after the processing by the assessee, the product in question still remains kiln burnt roofing tile or whether a new product with a commercial identity is produced ?

7. Having examined the issue in that light, what we find is that the process undertaken by the assessee is to subject kiln burnt roofing tiles to a mechanical process whereby colour coating is given to the tiles. After that process also, the product is used as roofing tiles. This therefore, means that even though the process undertaken by the assessee is a value addition to the product, even after such value addition, the product continues to be the same with a more attractive appearance. However, that does not give the product a commercial identity different from kiln burnt roofing tiles. If that is so, the rate of tax applicable will be one specified under Entry 18(1)(c) of the Third Schedule. This view that we have taken finds full support in the judgment of the Apex Court in **Gujarat Steel Tubes Ltd. v. State of Kerala and others** [74 STC 176].

8. We, therefore, do not find any reason to interfere with the orders of the Tribunal.

Revision fails and it is accordingly dismissed.

Sd/-
**ANTONY DOMINIC**
**JUDGE**

Sd/-
**SHAJI P. CHALY**
**JUDGE**

smv