IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

RP.No. 144 of 2015 () IN OT.Appeal.8/2012
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AGAINST THE JUDGMENT IN OT.Appeal 8/2012 of HIGH COURT OF KERALA
DATED 27-03-2014
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REVIEW PETITIONER(S)/RESPONDENT IN OT APPEAL :-
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STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.BOBBY JOHN

RESPONDENT(S)/APPELLANT IN OT APPEAL :-
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F I DESIGN & DEVELOPMENT PVT. LTD NO.15
IST FLOOR, FAVOURITE PLAZA, JAI BHARATH NAGAR
BANASWADI MAIN ROAD, BANGALORE - 560033.

BY SRI.JOSE JACOB

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 16-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

jvt

**RP.No.144 OF 2015**

**APPENDIX**

Review Petitioner's Exhibits :-

Annexure A :- True copy of agreement dated 2.9.2011.

Annexure B :- True copy of the certificates dated 29.12.2011 issued by the appellant.

Annexure C :- True copy of the certificate dated 10.8.2011.

Respondent's Exhibits :- NIL.

//True Copy//

P.A. to Judge

**ASHOK BHUSHAN, Ag. C.J &**
**A.M. SHAFFIQUE, J.**
**---------------------------------**
**R.P. No.144 of 2015**
**in**
**O.T.Appeal No.8 of 2012**
**-----------------------------------**
**Dated this the 16th day of February 2015**

**O R D E R**

**Shaffique, J.**

This review petition has been filed by the State of Kerala, who is the respondent in O.T.Appeal No.8 of 2012, challenging the judgment dated 27.3.2014. In paragraph 6 of the review petition, the following questions of facts are presently raised by the State, which reads as under :-

"a) The agreement dated 02.09.2011 entered between the appellant and the IIMK for the execution of work is silent about from where the materials can be procured. This gives the appellant freedom to procure the materials within the state or from outside the State. In the absence of such a conclusive evidence that the appellant procured materials from outside State in pursuance of agreement there can be a reasonable presumption that the appellant procured the materials within the State as part of intra State Works Contract.

b) The appellant brought certain materials from outside State to the State of Kerala as can be seen from Annexure B & C documents."

2. The following questions of law are now raised by the State in paragraph 7 of the review petition, which reads as

under :-

“a) Whether the appellant can claim transaction in question as one of Intra State Work Contract in the absence of any conclusive evidence to the effect that they have procured materials from outside the State and transported the same to State of Kerala in pursuance to Annexure A agreement between the appellant and IIMK ?

b) Whether the appellant who admittedly brought the material to the State of Kerala from outside the State as part of business is liable for registration under Section 15(2)(iv) of the KVAT Act ?

c) Whether the appellant, a person engaged in contract is liable to take registration irrespective of its tax liability/turnover as per the Section 15(2)(xi) of KVAT Act ?

d) Whether the appellant, a person residing outside the State and carrying business within the State is liable to take out registration irrespective turnover as per the mandate of Section 15(2)(vi) of KVAT Act ?

e) Whether the nature of transaction is to be ascertained by the fact finding authority in the light of available records and issue in this regard is to be remanded to the fact of finding authority ?”

3. The learned Government Pleader submits that though a Special Leave Petition was filed before the Supreme Court, the same was dismissed, however, with liberty to file review petition before this Court.

4. The main contention urged in the review petition is that the works contract, which is claimed by the appellant is not supported by any evidence and the materials on record have not

been considered by the authorities. The work contract involves several factors and therefore, necessary materials are to be verified in order to come to such a conclusion. That apart, it is contended that the dealer ought to have taken a registration under the KVAT Act and therefore, the judgment is liable to be reviewed.

5. This Court, after having considered the rival contentions, has taken a view that the materials available on record clearly indicates that the appellant/dealer has purchased goods from Karnataka and the same was brought to Kozhikode (Kerala) for the purpose of works contract. The materials clearly indicated that it was a case where the tax had been payable under the CST Act and once the dealer has suffered the liability to pay tax under the CST Act, there is no difficulty in coming to the conclusion that the KVAT Act has no application. This view has been reported in the judgment of the Supreme Court in **M/s.Hyderabad Engineering Industries** v. **State of Andhra Pradesh** [(2011) 4 SCC 705]. Though it is contended by the learned Government Pleader that the authorities did not verify the materials produced, the Division Bench did not agree with the same. Under such circumstances, we do not find any error

apparent on the face of the judgment.

6. In regard to the contention that the dealer ought to have registered under the KVAT Act, the same is also without any basis as we are dealing with a situation that the dealer has taken a works contract with IIMK, which apparently does not indicate that the dealer is required to be registered under the KVAT Act as he is not carrying on any business within the State of Kerala. The works contract is different from "carrying on business" as available under Sec.15 of the Act. Under such circumstances, this ground is also not available to the appellant. We do not find any error apparent on the face of the judgment.

Hence, the Review Petition is dismissed.

**Sd/-**
**ASHOK BHUSHAN**
**Ag. CHIEF JUSTICE**

**Sd/-**
**A.M. SHAFFIQUE**
**JUDGE**

Jvt