IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

ST.Rev..No. 81 of 2012 ()

AGAINST THE ORDER IN REVIEW APPLICATION NO. 1 TO 3 OF 2011 IN TA 4, 5 & 13 OF 2010 of KERALA SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH,KOZHIKODE DATED 13-06-2011

REVISION PETITIONER/RESPONDENT/REVENUE:

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

BY SENIOR GOVERNMENT PLEADER SRI.LIJU STEPHEN

RESPONDENT/APPELLANT/ASSESSEE:

ASSOCIATED LATEX INDIA LTD
BEACH ROAD, CALICUT PIN 673 001

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

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 13-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ST.Rev..No. 81 of 2012

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A : TRUE COPY OF THE ASSESSMENT ORDER DATED 28.05.2009.

ANNEXURE B : A TRUE COPY OF THE ORDER OF THE STAT DATED 23.03.2010.

ANNEXURE C : A TRUE COPY OF THE ORDER IN REVIEW PETITION DATED 13.6.2011.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

ST.Rev Nos.81, 83 & 91 of 2012

Dated this the 13th day of July, 2015

ORDER

Antony Dominic,J.

These revisions are filed by the assessee aggrieved by the order passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench, Kozhikode in appeal Nos. 4, 5 and 10 of 2010. In the appeals, assessment under Section 17(D) of the KGST Act for the assessment years 2001-2002, 2002-2003 and 2003-2004 were challenged. The assessment order was confirmed by the first appellate authority. By the impugned order dated 23.03.2010, the Tribunal allowed the further appeals filed by the assessee and orders of assessment were set aside. Review application filed by the Revenue were also dismissed. It is challenging these orders, the Revenue has filed these revisions.

2. When the matter was taken up, counsel for the assessee produced order passed by this Court in STR No.101 of 2011 which was rendered in the case of the assessee itself following another order passed by this Court in STR Nos.138 to 142 of

2010. In that order, this Court set aside the orders passed by the Tribunal and all lower authorities and remitted the matter back to the Assessing Officer giving one more opportunity to the assessee to establish that tax amount paid on raw material was not included in costing and in the price for the products sold. The relevant part of the order reads thus:

> "........Accordingly, we set aside the orders of the Tribunal and that of the first appellate authority and grant one more opportunity to the assessee to establish that tax amount paid on raw material is not included in costing and is not included in the price for the products sold and if so to grant refund. If it is established that the tax paid on raw material is not reckoned in product price, then the Accessing Officer shall grant refund.
>
> It will be open to the assessee to apply for CST exemption based on this judgment and if the assessee comes up with such a claim, the Assessing Officer shall grant exemption on CST based on the tax paid under KGST Act. However refund claim on KGST or CST will be considered based on the principles stated in the judgment above referred."

Since the issue considered by this Court is exactly similar in all aspects, these revision petitions are also disposed of, setting aside the orders impugned and remitting the matter back to the assessing authority with an opportunity to the assessee, in the manner as provided in the order of this Court in STR Nos.101/2011 referred to above.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

smv