IN THE HIGH COURT OF KERALA ATERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

RP.No. 893 of 2015 (V) IN WP(C).37214/2009

AGAINST THE JUDGMENT IN WP(C) 37214/2009 of HIGH COURT OF KERALA

REVIEW PETITIONER/PETITIONER:

M/S.SUPER PACKAGING INDUSTRIES
RAVIPURAM, ERNAKULAM. CURRENTLY AT: 39/5435
SOUTH BRIDGE AVENUE, PANAMPILLY NAGAR, KOCHI-682 036
REPRESENTED BY ITS MANAGING PARTNER-MR. N.X. GEORGE

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

RESPONDENTS/RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER
11ND CIRLCE, ERNAKULAM, KOCHI-682 015

2. THE STATE OF KERALA,
REPRESETNED BY THE SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001

BY SR.GOVERNMENT PLEADER (TAXES) SRI.SUDHISH KUMAR

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 30-11-2015, ALONG WITH R.P.NO.941/2015, RP. 878/2015, RP. 894/2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR &
K.P.JYOTHINDRANATH, JJ.
\- -
R.P.No.893/2015 in W.P.(C)No.37214/2009,
R.P.No.894/2015 in W.P.(C)No.2934/2013,
R.P.No.878/2015 in W.P.(C)No.19448/2010 &
R.P.No.941/2015 in W.A.No.588 of 2009
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Dated this the 30th day of November, 2015

ORDER

Jyothindranath, J.

These review petitions are filed in W.A.Nos.588/2009, W.P.(C) Nos.37214/2009, 19448/2010 and 2934/2013 wherein a common judgment was pronounced by this Court on 15.07.2015. The main ground for filing the review petitions is that the court committed an apparent mistake in applying the dictum laid down by the Constitution Bench in **State of Karnataka v. Azad Coach Builders Pvt.Ltd. And another [(2011) 19 KTR 73-SC]** referred in the judgment as well as coming to a conclusion that the packing material, which is the subject matter in this case, will not come under Section 5(3) of the CST Act i.e. the "same goods theory".

2. We heard the learned counsel for the review petitioners as

well as the learned Senior Government Pleader.

3. The main aspect argued is that the dictum laid down in Azad Coash Builders Pvt. Ltd.'s case (supra) is not considered in this case.

4. We perused the impugned judgment. In paragraph 21 of the judgment, the dictum is properly considered by the Division Bench which rendered the judgment. In paragraph 21, it is stated as follows :

> *" The important aspect pointed out by the Constitution Bench in the above decision is that there has to be an inextricable link between the local sales or purchase with the export of goods. For occasioning 'export', there must be a bond between the contract of sale and the actual exportation. Such a link, according to us, is absent as far as the sale of packing cartons by the appellant, to the exporters are concerned. It is also important to notice that there should be an intention on the part of both the buyer and the seller to export. The Constitution Bench specifically held that the word "occasion" in Section 5(3) of the CST Act means " to cause" or "to be the immediate cause of".*

Thus, it can be seen that the dictum laid down by the Apex Court is properly and correctly considered by this Court and applied in the judgment. The correctness of the said finding cannot be challenged in the review petitions and hence the review petitions are dismissed.

C.T.RAVIKUMAR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

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