IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

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

WA.No. 1584 of 2014 () IN WP(C).30318/2003

AGAINST THE JUDGMENT IN WP(C) 30318/2003 OF HIGH COURT OF KERALA
DATED 12-11-2013

APPELLANTS/RESPONDENTS:
----

1. DEVELOPMENT COMMISSIONER
COCHIN SPECIAL ECONOMIC ZONE, DEPARTMENT OF COMMERCE
GOVERNMENT OF INDIA, CSEZ ADMINISTRATIVE BUILDING
KAKKANADU.

2. UNION OF INDIA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF COMMERCE
NEW DELHI.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA

RESPONDENT/PETITIONER:

M/S. COCHIN MINERALS AND RUTILE LTD.
HAVING ITS REGISTERED OFFICE AT P.B.NO.73, VIII, 224
MARKET ROAD, ALUVA, REPRESENTED BY ITS GENERAL MANAGER
MR.RAJAN KARTHA.

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

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

- -

W.A.No.1584 of 2014

- -

Dated this the 1st day of July, 2015

<u>J U D G M E N T</u>

<u>Ramachandran Nair, J.</u>

The appeal is filed against the judgment of the learned Single Judge by which the writ petition has been allowed. The respondent herein is the petitioner in the said writ petition.

2. We heard the learned counsel on both sides.

3. The petitioner approached this Court challenging Ext.P5 order by which the appellants refused to allow reimbursement of central sales tax on purchases made through the manufacturer's agents in Kerala. The respondent, which is a 100% export oriented unit and having its office at Edayar is a registered dealer under the KGST and CST Act.

4. It was held by the learned Single Judge that the respondent is eligible to be granted the benefit.

Accordingly, Ext.P5 has been quashed and there is a direction to reimburse the claim of CST as per Ext.P2 application.

5. It is argued by Sri. N. Nagaresh, Assistant Solicitor General of India that the view taken by the learned Single Judge by entering into a finding that the C Forms can be acted upon cannot be justified.

6. Our attention was invited to Ext.R1(b) certificate produced by the respondent before the Chartered Accountant. It is submitted that for eligible claims the benefit was granted and item 66 onwards will show that the purchase is effected from a dealer functioning within the State.

7. The learned Single Judge took the view in favour of the respondent, by relying upon the relevant clause in Ext.P1 viz. Clause 3 (vi), which reads thus: "The reimbursement will be limited to the payment of CST against C Form only." Ext.P1 (Appendix - 14G) contains the procedures to be followed for reimbursement of central

sales tax on supplies made to export oriented units etc.

8. The learned counsel for the respondent Sri. P. Gopinatha Menon submitted that as far as the agents are concerned, they are purchasing registered dealers, who will be effecting the subsequent sale by transfer of documents of title to the goods. The formalities to be undertaken by them are covered by Rule 11B (c) of the Central Sales Tax (Kerala) Rules, 1957 and we extract the said rule herein.

> (c) The purchasing registered dealer who claims to have made a further subsequent sale by transfer of documents of title to the goods shall in respect of such claims under sub-section (2) of Section 6 furnish to the prescribed authority the portion marked 'original' of the Form E-I received by him from the selling dealer along with the original of declaration in Form 'C' received from the registered dealer to whom the sale is effected.

It is evident from the rule that, to the prescribed authority the portion marked 'original' of the Form E-1 received by the purchasing registered dealer from the selling dealer along with the original of declaration in Form 'C' received from the registered dealer to whom the sale is effected have to be submitted in respect of claims under Section 6(2) of the Act. It is submitted by the learned counsel that the tax has been paid at the rate of 4% and if the C Form had not been submitted it will be at 10%. It is submitted that the taxing officer has accepted these documents and therefore as regards the transaction there cannot be any doubt at this point of time and hence Ext.P5 cannot be supported.

9. The learned counsel for the appellants in reply submitted that as far as the appellants are concerned there are no methods to verify such documents. The learned Single Judge has held, overruling the stand of the appellants, that the sale in this case had taken place in the course of interstate trade as the sale was effected by transfer of documents or title to the goods during its movement from one State to another. The transfer of goods by the manufacturer to his agents does not constitute a sale and the sale becomes complete only when the property in the goods passes to the buyer. Therefore the view taken is that even if the agent of the manufacturer is within the State it will not make it a sale within the State thereby

dis-entitling the petitioner to claim concessional rate of sales tax against C-Form.

10. That the sales have been effected on C Forms cannot be disputed and therefore going by the relevant clauses in Ext.P1 the unit being a 100% export oriented unit and have fulfilled the necessary criteria they are entitled for reimbursement. Section 6(2) of the Act, (as far as it is relevant here) provides as follows:

> "6(2) Notwithstanding anything contained in Sub-section (1) or sub-section (1-A), where a sale of any goods in the course of Inter-State trade or Commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from the state to another any subsequent sale during such movement effected by it transfer of documents of title to such goods.
>
> (A) to the Government, or
>
> (B) to a registered dealer other than Government, if the goods are of the description referred to in Sub-section (3) of Section 8, shall be exempted from tax under this Act.

Sale effected by transfer of documents is contemplated therein. The contention is taken by appellants in paragraph

4 of the counter affidavit is that in respect of respondent's purchases through manufacturer's against 'C' Forms is a local sale. The respondent has clearly stated the said transactions are covered by Section 6(2). The plea raised by the appellants stand rejected by the learned Single Judge, rightly.

We therefore, find that the view taken by the learned Single Judge cannot be said to be unsustainable on any ground. The appeal thus fails and is accordingly dismissed.

No costs.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/