

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WP(C).No. 10491 of 2009 (F)

PETITIONER(S):

**K.A.DEVASSYKUTTY,
KOIKKARA HOUSE, KANJOOR.P.O., ERNAKULAM DIST.**

**BY ADVS.SRI.BOBBOY JOHN
SRI.P.N.DAMODARAN NAMBOODIRI**

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REP. BY ITS SECRETARY, VYDHYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.**
- 2. THE CHIEF ENGINEER.(DISTRIBUTION
CENTRAL), K.S.E.B., GANDHI SQUARE,
D.H.ROAD., ERNAKULAM.**
- 3. THE COMMERCIAL TAX OFFICER (WC & LT),
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERRY.**

**R1 & R2 BY ADVS. SRI.P.SANTHALINGAM (SR.)
SRI.S.SHARAN, SC**

R3 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY OF THE PURCHASE ORDER DTD.20.10.2008 ISSUED BY THE
2ND RESPONDENT TO THE PETITIONER.**

**EXT.P2: TRUE COPY OF THE AGREEMENT DTD.31.10.208 ENTERED BETWEEN THE
PETITIONER AND THE 1ST RESPONDENT.**

**EXT.P3: TRUE COPY OF THE INVOICE NO.430 ISSUED BY M/S. T.V.JOHNY & COMPANY
TO THE PETITIONER.**

**EXT.P3(a): TRUE COPY OF THE INVOICE NO.431 ISSUED BY M/S. T.V.JOHNY &
COMPANY TO THE PETITIONER.**

**EXT.P3(b): TRUE COPY OF THE INVOICE NO.432 ISSUED BY M/S. T.V.JOHNY &
COMPANY TO THE PETITIONER.**

**EXT.P3(c): TRUE COPY OF THE INVOICE NO.433 ISSUED BY M/S. T.V.JOHNY &
COMPANY TO THE PETITIONER.**

**EXT.P3(d): TRUE COPY OF THE INVOICE NO.434 ISSUED BY M/S. T.V.JOHNY &
COMPANY TO THE PETITIONER.**

**EXT.P3(e): TRUE COPY OF THE INVOICE NO.435 ISSUED BY M/S. T.V.JOHNY &
COMPANY TO THE PETITIONER.**

**EXT.P3(f): TRUE COPY OF THE INVOICE NO.437 ISSUED BY M/S. T.V.JOHNY &
COMPANY TO THE PETITIONER.**

**EXT.P4: TRUE COPY OF THE INVOICE NO.465 DTD.13.11.2008 ISSUED BY THE
PETITIONER TO THE 2ND RESPONDENT.**

**EXT.P5: TRUE COPY OF THE NON LIABILITY CERTIFICATE DTD.25.11.2008 ISSUED BY
THE 3RD RESPONDENT TO THE PETITIONER.**

**EXT.P6: TRUE COPY OF THE FORWARDING LETTER DTD.12.1.2009 ISSUED BY THE
2ND RESPONDENT TO THE PETITIONER.**

**EXT.P7: TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE
2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

**EXT.R2(a): PHOTOCOPY OF THE INVOICE NO.465 DTD.13.11.2008 SUBMITTED BY THE
PETITIONER.**

**EXT.R2(b): PHOTOCOPY OF THE LETTER NO.CE(DC)/ABC/PURCHASES/08-09/4472
DTD.13.1.2009 SENT TO THE PETITIONER.**

Msv/

WP(C).No. 10491 of 2009 (F)

EXT.R1(a): TRUE COPY OF THE PURCHASE ORDER ISSUED IN FAVOUR OF THE PETITIONER.

EXT.R1(b): TRUE COPY OF THE INVOICE NO.465, DTD.13.11.2008 ISSUED TO THE 2ND RESPONDENT BY THE PETITIONER.

EXT.R1(c): TRUE COPY OF THE LIABILITY CERTIFICATE DTD.25.11.2008.

EXT.R1(d): TRUE COPY OF THE LETTER NO.CE(CD)/ABC/PURCHASE/08-09/4472 DTD.13.1.2009.

EXT.R1(e): TRUE COPY OF THE AGREEMENT.

//TRUE COPY//

P.S.TO JUDGE

MsV/

K. VINOD CHANDRAN, J.

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W.P.(C) No.10491 of 2009 - F

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Dated this the 25th day of May, 2015

J U D G M E N T

The petitioner is aggrieved with the reduction in the contract amount to the extent of the input tax credit, which the petitioner contends, is a statutory right under the Kerala Value Added Tax Act (KVAT) 2003. The brief facts to be noticed are that, the petitioner entered into a supply contract with the Kerala State Electricity Board/1st respondent. The petitioner supplied the entire materials as per the agreement. The total contract amount was Rs.57,15,400/-. However, the petitioner was sanctioned with only Rs.55,23,965/-. The petitioner contends that, the reduction of Rs.1,91,435/- is with respect to the tax, which he had paid on purchase from other dealers, which the petitioner is entitled to get input tax credit; as per the provisions of the KVAT Act.

2. The claim is not against the sales tax authorities

nor is there any reduction of the input tax credit, by such authorities. The Board refused to pay the tax paid by the petitioner to his sellers, which tax is evidenced at Ext.P3 series. The rejection is based on paragraph 2 of Annexure II, Terms and Conditions. Though the taxes and dues were to be admitted at actuals, on production of documentary evidence, it contained a rider contends the Board insofar as enabling the petitioner to only claim for the tax for the value addition at the hands of the petitioner; in the following words.

Taxes and duties will be admitted at actuals only on production of documentary evidence. The material should be properly insured at your cost. Wherever deduction of tax at source is applicable, the same shall be done from the payment due to the supplier. The Board shall remit tax deducted at source directly to the tax authorities. Such amount shall not be reimbursed to the supplier. In addition to the above, wherever VAT is applicable under KVAT Act 2003, only the net VAT after input credit, if any shall be paid. (supplied).

3. The petitioner's contention is that, the petitioner's entitlement for input tax credit under the KVAT Act, will not absolve the Board from paying it to the petitioner. The petitioner

purchased the materials on payment of tax and issued invoices on the petitioner's value addition as also the component for which the taxes were already paid by the petitioner. The statutory right available under the KVAT Act is to collect the entire tax from the purchaser. The Board, being the ultimate purchaser, under the contract, the total price of goods would be the price of the goods along with the total tax payable thereon. Input tax credit is only a measure by which the petitioner who is the intermediary dealer, is absolved from the liability to pay tax under the KVAT Act, twice, since that paid by the petitioner to his seller, would also be collected by the State from the seller. The concept of input tax requires no elaboration and the same is trite.

4. The learned Standing Counsel for the Board however, would contend that the terms of payment are regulated by a specific contract. The petitioner has specifically agreed to concede the amount of input tax credit and not claim it from the

Board. The specific terms of the contract interdicts the petitioner from recovering the tax, which is already paid by the petitioner and which enables him to seek for input tax credit with respect to the value addition at the hands of the petitioner, is the argument.

5. A reading of the specific clause relied on by the Board would indicate that it is otherwise. The entire tax as per the actuals on the basis of the invoice, is the liability of the Board. That is agreed to by the Board in the clause extracted above. However, the Board being an arm of the State had made a provision in the agreement that, the tax amounts due as per the invoices would be paid directly to the Government. In the value addition regime, as brought in by the KVAT Act, every sale is taxable and any tax paid at the earlier point, would be an entitlement for input tax credit, to the purchasing dealer. In the present case, the first sale is the purchase of the petitioner from another dealer. The said invoice is produced as Ext.P3 series.

The petitioner has paid 4% tax on the invoice price. After purchase of the said materials, the petitioner has raised an invoice as per Ext.P4 on the K.S.E.B.

6. Ext.P4, invoice of the petitioner indicated the value addition in his hands; being the tax, loading and unloading charges, transporting expenses and insurance premium. Ext.P5 indicates that on the invoice raised by the petitioner on the K.S.E.B, tax was calculated @ 4% and the input tax credit claim available to the petitioner as evident from the sale invoices of his purchase, was deducted. Only the balance tax ie., the tax due on the value addition at the hands of the petitioner was remitted directly to the Government. The tax component paid by the petitioner, to his seller, which the petitioner could claim as input tax, in his sales tax returns, was declined.

7. Even if the entire tax component was paid to the petitioner, the petitioner would have been liable only for payment of tax @ 4% to the Government, on the value addition

at his hands, since, the returns would have claimed the input tax credit, being the tax paid by him to his seller, which his seller would be liable to pay to the Government. The extracted clause above, does not indicate waiver of the amount paid as input tax credit, as agreed by the Board. The Board had specifically made a condition that the tax payable to the Government would be paid by the Board itself and not paid to the petitioner herein. This was to ensure that the tax component would definitely go to the Government. The highlighted portion in the extracted clause refers to payment to the Government. VAT as applicable under the KVAT Act, being the net tax after input tax credit, that alone would be the liability of the petitioner to the Government, which is paid by the Board. Otherwise, if the amounts already paid by the petitioner to his seller is also paid to the Government, then the very scheme of VAT would be put in jeopardy since then, for the first sale, the Government would get 4% tax twice on the sale to the petitioner and also on his subsequent sale to the Board.

This double payment is what is sought to be avoided by the afore extracted clause.

8. In such circumstance, the input tax credit available to the petitioner would have to be paid by the purchaser of the petitioner ie., the Board and the condition in the contract relied on by the Board cannot be understood as one of waiver made by the petitioner herein. In the circumstance of no factual dispute arising, it would be proper for this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution of India, since the Board definitely comes within the purview of Article 12 and the terms of the contract are clear and there is no ambiguity therein.

9. It is directed that the tax component which is available to the petitioner by way of input tax credit would be paid by the Board to the petitioner within a period of three months from today, failing which, interest would be due on that component @10% from January 2009 being one month from

Ext.P5. In that event, such interest component liability being cast on the Board, the interest component shall be recovered from the officer of the Board, who committed such default. If payment is made within three months, there would be no liability for interest.

The writ petition would stand allowed with the above directions.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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// true copy //

P.A to Judge.