IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 27TH DAY OF JULY 2023 / 5TH SRAVANA, 1945

WP(C) NO. 14995 OF 2020

PETITIONER/S:

VETTATHIL AGENCIES
PONNAMVELY, PATTANAKKAD P.O., CHERTHALA, REPRESENTED BY ITS MANAGING PARTNER, SHAFI.

BY ADVS.
SRI.K.SRIKUMAR (SR.)
SRI.K.MANOJ CHANDRAN

RESPONDENT/S:

1 THE STATE TAX OFFICER
S.G.S.T. DEPARTMENT, CHERTHALA - 688 524.

2 THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES
DEPARTMENT OF COMMERCIAL TAXES, ALAPPUZHA - 688 001.

3 THE COMMISSIONER OF COMMERCIAL TAXES
DEPARTMENT OF COMMERCIAL TAXES, TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM - 695 001.

BY ADV GOVERNMENT PLEADER

OTHER PRESENT:

RESHMITA RAMACHANDRAN(GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

1. The present writ petition has been filed under Article 226 of the Constitution of India impugning Exts.P7 and P7(A) assessment orders passed for assessment years 2009-10 and 2010-11 respectively.

2. The assessing authority has added total turnover and the amount received by way of discount by the petitioner through credit notes from the suppliers of cement. The issue whether the amount received by way of discount can be added to total turnover and tax can be demanded on such amount is no longer *res integra*. A Full Bench of this Court in **Saji Thomas v. Assistant Commissioner, Department of Commercial Taxes Special Circle and Ors [2022 (3) KHC 515]** has decided the issue comprehensively and held that the language of Section 11(3) r/w. Fifth proviso of the Kerala Value Added Tax Act, 2003 does not permit the levy on credit notes within the scope of assessment and levy of tax. Paragraph Nos.9 and 10 of the said Judgment, which are relevant, are extracted hereunder:

“9. Now, we will examine Section 2 of the Act, which begins with the words “In this Act, unless the context otherwise requires”, which means that the words covered by Section 2 are treated as defined words, and the defined meaning is to be applied unless the context otherwise requires. There is no quarrel on the above proposition. The definition reads:

“2. Definitions.- In this Act, unless the context otherwise requires,-

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(lii) "turnover" means the aggregate amount for which goods are either bought or sold, supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or for other valuable consideration, provided that the proceeds of the sale by a person not being a Company or Firm registered under the Companies Act, 1956 (Central Act 1 of 1956) and Indian Partnership Act, 1932 (Central Act 9 of 1932) [or society including a co-operative society or association of individuals whether incorporated or not] of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

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Explanation VII:- Where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods."

The extended meaning of the word is not applied every time it is used, but the meaning ultimately depends on the context. The definition clause does not extend the scope of the Act or shadow the second limb of the Fifth proviso to Section 11(3) of the Act in its application. Section 2(lii) Explanation VII must be read and interpreted as defined in the Act unless the context otherwise requires. The Fifth proviso is a context otherwise spelt out by Kerala Finance Act 2008, effective from 01.04.2005. The Legislature, in its competence, wisdom and policy of providing measures to a few individuals in the trade, added a second limb to the Fifth proviso to Section 11(3) of the Act. The amended portion of proviso does not deny such claim if, firstly, the amount covered by credit notes that do not affect the input tax credit already availed of; secondly, amount covered by credit notes received by the dealer towards reimbursement of expenses incurred by the dealer.

9.1 The argument of Revenue to include such cash credits as turnover under Section 2(lii) Explanation VII does not fit into the context in which the Fifth proviso is incorporated. We have construed the text of relevant provisions and apply natural and literal meaning to the expressions both in Section 2 and 2(lii) read with Explanation VII and Fifth proviso to Section 11(3) of the Act. The Revenue applies the extended meaning of Explanation VII to Section 2(lii) of the Act for bringing within the scope of turnover. This argument ignores the operative portion of Section 2 of the Act This Court, for answering the question framed, takes the path of, firstly, interpreting the words viz. In this Act, unless the context otherwise requires. The meaning of the expression is that the defined words are applied as per the definition unless the context otherwise requires. Explanation VII to Section 2(lii) deals with the extended meaning of what ‘turnover’ constitutes. It is a straight application of the meaning of defined words if the context permits. If the context does not permit, then applying the definition read with Explanation to a substantive provision is impermissible. Though a very serious attempt was made by both sides to interpret the subject provisions of law with their convenient figures and examples, we refrain from understanding the provisions of law by these external details.

9.2 The syntax of the latter portion of the proviso is definitely used as conjunction only to convey meaning at variance with the first limb of the proviso. The second proviso is once attracted, the consequence of such position is that the effect of two situations is not reckoned for assessment under the Act. That being so, the interpretation of the Revenue not only brings the credit notes within the scope of assessment but tax also is levied. The language of Section 11(3) read with the Fifth proviso does not permit such levy. We have construed and interpreted whether the proviso as it stands from 01.04.2005 warrants a different view because of contextual change. The context in the second limb of the Fifth proviso to Section 11(3) warrants a different understanding, and through a restricted interpretation, we ought not to deny what is expressed by the State Legislature to a few of the credit notes, subject to complying with the condition set out in the Fifth proviso to Section 11(3) of the Act.

10. To sum up:

a) The definition of the word 'turnover' in Section 2(lii) is applicable unless the context otherwise demands.

(b) The deemed turnover subject to satisfying a condition stipulated in Explanation VII could arise if the context in which the demand allows such definition to operate.

(c) The Legislature incorporated the second limb to the Fifth proviso to Section 11(3) and by such amendment, the Legislature has taken out from the purview of assessment, credit notes received subsequent to invoice and payment of tax by the manufacturer/supplier and not claiming refund or adjustment of input tax.

(d) In cases in which tax is paid at the time of invoice, and no adjustment of input tax is claimed by the manufacturer or the supplier, then, even if the dealer sells it at a lesser price and claims input credit proportionate to the sales price, and subsequently receives credit note from manufacturer/supplier, such credit notes, discount, loss on recoupment is not included for assessment, subject to manufacturer/supplier not claiming refund or adjustment of input tax already deposited. In other words, the credit notes not affecting input tax already deposited cannot be treated as taxable turnover by the extended meaning of Section 2 subsection (lii) Explanation VII of the Kerala Value Added Tax Act.

(e) In the scheme of value addition and payment of tax on such value addition, the levy of tax is justified on value addition, but, without value addition, sale, or purchase, and for the amount retained by the dealer value-added tax is demanded contrary to Section 11(3) Fifth proviso of the Act."

3. In view of the aforesaid decision of the Full Bench, the present writ petition is allowed and the impugned assessment orders so far as linking the credit notes given by the suppliers to the petitioner within the assessment and levying tax are set aside.

Sd/-

DINESH KUMAR SINGH

JUDGE

Shg

APPENDIX OF WP(C) 14995/2020

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2009-2010 DATED 30.09.2015.
EXHIBIT P1 (A)	TRUE COPY OF THE ASSESSMENT ORDER DATED 30.08.2014 FOR THE YEAR 2010-2011.
EXHIBIT P2	TRUE COPY OF THE JUDGMENT DATED 02.12.2015 IN W.P.(C) NO.27088/2014.
EXHIBIT P2 (A)	TRUE COPY OF THE JUDGMENT DATED 04.12.2015 IN W.P.(C) NO.34773/2015.
EXHIBIT P3	TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2009-2010 DATED 10.11.2016.
EXHIBIT P3 (A)	TRUE COPY OF THE ASSESSMENT ORDER DATED 10.11.2016 FOR THE YEAR 2010-2011.
EXHIBIT P4	TRUE COPY OF THE CERTIFICATES ISSUED BY THE SELLER COMPANIES.
EXHIBIT P5	TRUE COPY OF THE JUDGMENT DATED 07.02.2017 IN W.P.(C) NO.40152/2016.
EXHIBIT P6	TRUE COPY OF THE APPELLATE ORDER DATED 27.02.2018.
EXHIBIT P7	TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2009-2010 DATED 25.05.2020.
EXHIBIT P7 (A)	TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2010-2011 DATED 25.05.2020.
EXHIBIT P8	TRUE COPY OF THE REFERENCE ORDER DATED 27.02.2018 IN W.P.(C) NO.5467/2017 AND CONNECTED CASES.