



O.T. Rev. No.80 of 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 10TH DAY OF FEBRUARY 2025 / 21ST MAGHA, 1946

OT.REV NO. 80 OF 2021

AGAINST THE ORDER DATED 03.02.2021 IN T.A.(VAT) NO.277 OF
2018 OF KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH,
KOZHIKODE,

REVISION PETITIONER/RESPONDENT :

M/S HI-LITE PROJECTS PVT.LTD.,
3RD FLOOR, BUSINESS PARK, HI-LITE CITY,
THONDAYAD BYPASS, G.A.COLLEGE P.O., CALICUT,
(REPRESENTED BY ITS MANAGING DIRECTOR MR.P.SULAIMAN) .

BY ADVS.
M.P.SHAMEEM AHAMED
CYRIAC TOM

RESPONDENT/APPELLANT :

STATE OF KERALA,
(REPRESENTED BY SECRETARY, DEPARTMENT OF TAXES,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM) .

BY ADV VK SHAMSUDHEEN, SR. GOVERNMENT PLEADER

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR HEARING ON
10.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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ORDERDr. A.K.Jayasankaran Nambiar, J.

This revision petition is preferred against the order dated 3.2.2021 of the Kerala Value Added Tax Appellate Tribunal, Additional Bench, Kozhikode, in T.A.(VAT) No.277 of 2018.

2. The brief facts necessary for the disposal of this tax revision case are as follows:

The petitioner before us is a works contractor who had opted to pay tax under the compounding scheme under Section 8 of the Kerala Value Added Tax Act (for short, the 'KVAT Act'), for the year 2014-2015. Going by the provisions of Section 8 as applicable to the works contractors and as it stood during the assessment year 2014-2015, a works contractor who imports any goods into the State from other States or Country for incorporation in the works contracts and/or who was registered under the provisions of the Central Sales Tax Act, could, at his option pay tax at the rate of 6% of the whole contract amount along with tax under sub-section (2) of Section 6. In the case of a works contractor who was not registered under the Central Sales Tax Act and who had not imported any goods into the State from other States or Country for incorporation in the works contract, he could at his option instead of paying tax in accordance with Section 6 of the KVAT Act pay tax at the rate of 3% of the whole contract amount along with tax under



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sub-section (2) of Section 6.

3. The petitioner herein, being a person who had cancelled his C.S.T. Registration with effect from 31.3.2014, opted for payment of tax on compounded basis under Section 8(a)(ii) at the rate of 3% of the whole contract amount along with tax under sub-section (2) of Section 6. The basis of the said option was the fact that he did not have a C.S.T. registration during the relevant year and further, had not imported any goods into the State from other States or Country for incorporation in the works contracts undertaken by him during the said year.

4. In the penalty proceeding that was initiated against the petitioner during the said assessment year, the intelligence officer found that there were certain consignments of taxable goods that had reached the petitioner as consignee through transactions that were in the nature of inter-state sales. He, accordingly, found that the petitioner was not entitled to the concessional rate of 3% on a compounded basis but, was required to pay tax on the compounded basis at the rate of 6% of the contract amount. He, therefore, calculated the differential tax payable by the petitioner and imposed double the said amount as penalty on the petitioner.

5. In a revision preferred by the petitioner against the said penalty order, the petitioner produced materials before the revisional authority to show that, notwithstanding the fact that the taxable goods in question had reached the petitioner as consignee from a supplier outside the



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State, the tax at the local rate had been paid by his immediate supplier within the State on the same transaction and in respect of the same taxable goods. The said documents were examined by the revisional authority, who found that the contentions of the petitioner regarding the taxable goods having suffered tax as applicable under the KVAT Act had not been considered by the original authority and therefore set aside the penalty order and remitted the matter back to the original authority for a specific finding on the said issue. The revision petition was, therefore, allowed by the revisional authority by way of remand.

6. In the consequential order that was passed by the intelligence officer pursuant to the remand, the said authority once again found against the petitioner on the aspect of penalty. While the intelligence officer found in Annexure A10 order that the documents produced by the petitioner clearly showed that the taxable goods obtained by him from the local supplier had suffered tax at the rate applicable to transactions under the KVAT Act, he went on to hold that in as much as the check post declarations and Form 8F generated in respect of interstate sales had shown the name and TIN number of the petitioner, the conclusion was inescapable that the petitioner had obtained taxable goods in interstate transactions.

7. Aggrieved by the said order of the intelligence officer, the petitioner once again filed an appeal before the first appellate authority. This time again, the 1st appellate authority took note of the finding of the



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intelligence officer that the transactions in question had actually suffered tax at the rate applicable under the KVAT Act and therefore found that notwithstanding that the transactions were also covered by 8F Forms which showed the name of the petitioner as consignee, the petitioner had to get the benefit of the concessional rate as applicable under Section 8(a)(ii) of the KVAT Act. In arriving at the said conclusion, the first appellate authority also found that it was open to the tax payer to arrange his affairs in a manner that would reduce the impact of tax on him and that the said practice of arranging one's affairs to minimize the tax liability could not be seen as an act of tax evasion.

8. In the appeal carried by the revenue before the appellate tribunal, the appellate tribunal took note of the contention of the revenue that the nature of the transaction was that of an interstate sale since the 8F Forms covering the transactions clearly revealed the interstate nature of the transactions and found that it was the provisions of Section 8(a)(i) and not Section 8(a)(ii) that would apply in the case of the petitioner. Thus, notwithstanding the fact that the transactions in question had suffered tax at the rate applicable under the KVAT Act, on the mere finding that the 8F declarations showed the name of the petitioner as consignee, the tribunal felt that the petitioner was required to pay tax at a higher rate of 6% and could not get the concessional rate of 3%. The penalty calculated by the intelligence officer was, therefore, restored and sustained by the appellate tribunal.



9. Before us, the petitioner raised the following substantial questions of law:

(a) Whether the benefit of compounded rate of tax under Sec 8(a)(ii) of the KVAT could be denied to a dealer for the simple reason that his local supplier had purchased the goods from interstate suppliers for making local sale to the said dealer?

b) Whether, the Intelligence Officer could have expanded the scope of enquiry in the remand proceedings and levied the penalty on fresh grounds while passing the modified order dated 29.12.2016 when the direction in the Revisional Authority's order dated 24.10.2016 was specific and limited to verification of certain aspects mentioned therein?

(c) Whether the Tribunal and the Intelligence Officer had erred in their finding that the Form 8F token for the alleged transactions were generated by the Petitioner herein, when the RTI reply dated 20.03.2017 categorically states that the Form 8Fs in question was generated using the public log in facility and when the copies of Form 8F token details provided in the RTI reply show that these form 8Fs were generated by third parties?

(d) Whether a person could be said to be the 'purchaser' of goods merely because his name is shown as 'consignee' in Form 8F or in the tax invoice, especially when the Form 8F is only a document for the transportation of goods?

(e) Whether or not the Tribunal and Intelligence Officer are correct in their finding that the Petitioner had effected interstate purchases, even when the Petitioner's suppliers had given confirmation that the interstate purchases in questions were actually effected by them by paying CST on such purchases and also when then had confirmed they had also shown these as local sales to the Petitioner in the VAT returns and applicable taxes are paid?

(f) Whether the Tribunal and the Intelligence Officer could have held that the alleged transactions are interstate purchases



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effected by the Revision Petitioner herein interstate transactions are entered in the name of the Revision Petitioner ignored the finding given in the order dated 29.12.2016 that merely because the Petitioner's TIN appeared in the KVATIS as 'consignee' it cannot be presumed that the revision petitioner had effected the interstate purchases.

(g) Whether, in the facts and circumstances of the case, it can be called as a case of "evasion" of taxes, warranting levy of penalty under Sec 67 of the KVAT Act?

10. We have heard Sri. Shameem Ahamed, the learned counsel appearing for the petitioner and Sri. V.K. Shamsudheen, the learned Senior Government Pleader appearing for the respondent.

11. On consideration of the rival submissions, we find that it is not in dispute that with respect to the taxable goods received by the petitioner and forming the subject matter of these proceedings, the tax due under the KVAT Act was discharged by the supplier of the goods to the petitioner. The only reason why the intelligence officer at first instance, and the appellate tribunal in appeal, sustained the imposition of penalty on the petitioner was the finding that in the 8F Form that accompanied the goods, the name of the petitioner was shown as consignee. It has been the consistent stand of the petitioner before various authorities below that its supplier within the State had placed an order for their taxable goods on a supplier outside the State but had given instructions to the latter to despatch the goods directly to the petitioner as consignee. It was, therefore, that the goods reached the



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petitioner as consignee under the cover of 8F Forms generated with the petitioner's TIN Number. Despite this, it is not in dispute that the taxable goods received by the petitioner suffered tax at the rate applicable under the KVAT Act. We find, therefore, that there was no revenue loss as far as the State is concerned since the State had received the tax due in respect of the said goods at the rate applicable to transactions carried on intra-state, although their case was that it was an inter-state transaction. Merely because the 8F declarations showed the name of the petitioner as consignee, we do not think that the nature of the transactions itself could be changed to an interstate transaction for the purposes of denying the petitioner the benefit of the concessional rate of tax under Section 8(a)(ii). We, therefore, set aside the impugned order of the tribunal as also Annexure A10 order of the intelligence officer imposing the penalty on the petitioner and restore Annexure A15 order of the first appellate authority.

The O.T.Revision is thus allowed by answering the questions of law raised in favour of the petitioner/assessee and against the revenue.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR

JUDGE

Sd/-

EASWARAN S.

JUDGE

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APPENDIX OF OT.REV 80/2021

PETITIONER ANNEXURES

Annexure A1	COPY OF THE NOTICE DATED 07.05.2016.
Annexure A2	COPY OF THE LETTER DATED 13.06.2016 FILED BY THE PETITIONER'S ADVOCATE SEEKING THE DETAILS OF THE INTERSTATE PURCHASE.
Annexure A3	COPY OF THE CHECK POST TRANSACTIONS AS FURNISHED BY THE LD.INTELLIGENCE OFFICER TO THE PETITIONER.
Annexure A4	COPY OF THE DETAILED REPLY DATED 15.06.2016 ALONG WITH ALL SUPPORTING DOCUMENTS FILED IN RESPONSE TO NOTICE DATED 07.05.2016.
Annexure A5	COPY OF THE ORDER DATED 20.06.2016 PASSED BY THE INTELLIGENCE OFFICER CONFIRMING THE PENALTY OF INR 1,20,97,517/-
Annexure A6	COPY OF THE GROUNDS OF REVISION FILED BEFORE THE DEPUTY COMMISSIONER AGAINST THE ORDER DATED 28.06.2016.
Annexure A7	COPY OF THE ADDITIONAL SUBMISSIONS MADE BEFORE THE DEPUTY COMMISSIONER IN RP 24/16-17.
Annexure A8	COPY OF THE ORDER OF THE DEPUTY COMMISSIONER RP 24/16-17 DATED 24.10.2016.
Annexure A9	COPY OF THE ADDITIONAL SUBMISSIONS DATED 04.11.2016 FILED BEFORE THE INTELLIGENCE OFFICER ALONG WITH ALL SUPPORTING DOCUMENTS.
Annexure A10	THE MODIFIED ORDER DATED 29.12.2016 PASSED BY THE INTELLIGENCE OFFICER.
Annexure A11	COPY OF THE REVISION PETITION FILED BY THE PETITIONER AGAINST THE MODIFIED ORDER DATED 29.12.2016.
Annexure A12	COPY OF THE RTI APPLICATION FILED BEFORE THE COMMISSIONER OF COMMERCIAL TAXES.



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- Annexure A13** COPY OF THE REPLY DATED 08.03.2017 RECEIVED UNDER RTI ACT FROM THE OFFICE OF THE COMMISSIONER OF THE COMMERCIAL TAXES.
- Annexure A14** COPY OF THE FORM 8F PRESCRIBED UNDER THE KAVAT RULES.
- Annexure A15** COPY OF THE ORDER DATED 09.02.2018 PASSED BY THE DEPUTY COMMISSIONER (APPEALS), I KOZHIKODE IN KAVAT APPEAL NO.792/2017.
- Annexure A16** COPY OF THE APPEAL IN TA (VAT) 277/2018 FILED BY THE STATE OF KERALA BEFORE THE TRIBUNAL, KOZHIKODE.
- Annexure A17** COPY OF THE CIRCULAR NO.19/2012 DATED 29.06.2012.
- Annexure A18** CERTIFIED COPY OF THE ORDER DATED 03.02.2021 IN TA (VAT) NO.277/2018 PASSED BY THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ADDL. BENCH, KOZHIKODE.

HIGH COURT OF KERALA
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