



**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**&**

**THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.**

**MONDAY, THE 2<sup>ND</sup> DAY OF SEPTEMBER 2024 / 11TH BHADRA, 1946**

**OT.REV NO.38 OF 2018**

**AGAINST THE ORDER DATED 15.12.2017 IN TAVAT NO.291 OF 2017 OF  
KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM**

**REVISION PETITIONER/APPELLANT/APPELLANT/ASSESSEE:**

**M/S J.K. CEMENT LTD.,  
POONITHURA, KOCHI, REPRESENTED BY ITS AUTHORIZED  
SIGNATORY, UNNIKRISHNAN JITHESH.**

**BY ADVS.  
K.SRIKUMAR (SR.)  
P.R.AJITH KUMAR  
K.MANOJ CHANDRAN**

**RESPONDENT/RESPONDENT/RESPONDENT/REVENUE:**

**STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY,  
GOVERNMENT OF KERALA, TRIVANDRUM - 695 001.  
BY SMT. RESMITHA RAMACHANDRAN, GP.**

**THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD  
ON 02.09.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**



**A.K. JAYASANKARAN NAMBIAR & SYAM KUMAR V.M., JJ.**

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**O.T.R.(VAT) No. 38 of 2018**  
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**Dated this the 2<sup>nd</sup> day of September, 2024**

**ORDER**

A.K.Jayasankaran Nambiar, J.

The revision petitioner is a manufacturer of cement and a dealer registered under the Kerala Value Added Tax Act. For the assessment year 2013-14, pursuant to an audit visit conducted in the business place of the petitioner the assessing authority completed the assessment by adding 'freight charges' shown in the invoices issued by the petitioner to its dealers, to the price of the cement that was mentioned in the said invoice, for the purposes of levying tax. Although, the petitioner contended that the 'freight charge' was separately collected from the dealer and as per the terms of the contract between the petitioner and the dealer, the 'freight charge' had to be borne by the dealer, no documents or books of accounts were produced before the assessing authority to substantiate the said contention. The assessing authority therefore proceeded to complete the assessment as proposed.

2. The appeals preferred by the petitioner before the First Appellate Authority and the Tribunal did not meet with any degree of success and the said appeals were also dismissed by the said authorities. Before the Appellate Tribunal, although an opportunity was granted to the petitioner to produce



documents to substantiate their contentions that the 'freight charges' were separately collected, and were not collected as part of the price of the cement sold to the dealer, no documents were produced by the petitioner. It is under those circumstances that the Appellate Tribunal proceeded to confirm the order of the assessing authority.

3. In the OT Revision, the following questions of law are raised.

"A. Is not the Assessing authority, on facts and circumstances of the case, legally and materially erred in adding the freight charges separately specified as deduction in invoices to the taxable turnover of the Revision petitioner?

B. Whether the Tribunal is justified in confirming the findings in respect of the addition of Freight/additional discount to the turnover of the petitioner, particularly when the purchasing dealers have specifically admitted that the freight charges were borne by them?

C. Is not the failure to consider the relevant and material evidences and deciding the case relying on irrelevant materials by the Tribunal, illegal, against natural justice and hence unsustainable in law?

D. Whether the Tribunal erred in ignoring the binding dictum laid down by the Hon'ble Supreme Court in deduction of freight, as contemplated in the provisions governing deduction of freight charges from the total turnover?"

4. Arguing on behalf of the revision petitioner, it is the submission of Sri.K.Sreekumar, learned Senior Counsel assisted by Sri.Manoj Chandran that as per Rule 10 (e) of the KVAT Rules wherever the 'freight charges' are shown separately in the invoice, the same is permissible as a deduction from the sale



price for the purposes of taxation. Reliance is also placed on the judgment of the Supreme Court in **IFB Industries Ltd. v. State of Kerala** [(2012) 4 SCC 618] to suggest that there is no presumption that if the 'freight charges' are shown along with the price of the cement in the same invoice, the same forms part of the price of the cement.

5. Per contra, it is the submission of the learned Government Pleader, Smt.Resmitha Ramachandran, that the assessing authority, the First Appellate Authority and the Appellant Tribunal, had concurrently found as a finding of fact that the petitioner had not produced any document to fortify his contention that the 'freight charges' were separately collected and did not form part of the price of the cement that was sold to the dealer. It is her submission that in the absence of any proof to substantiate the contention of the petitioner, the orders of the authorities below did not require any intervention at the hands of this Court.

6. On a consideration of the rival submission, we find force in the submission of the learned Government Pleader that in the absence of any document or books of accounts produced by the petitioner before the statutory authorities including the Appellate Tribunal, the petitioner could not be seen as having rebutted the presumption that flowed from the mention of 'freight charges' in the invoice that was issued by him to the dealer.

7. The normal presumption would be that the 'freight charges' were collected from the dealer because the 'freight charges', over and above the price of the cement, was to be borne by the said dealer. If this presumption had to be



rebutted then it was for the petitioner to show by reference to books of accounts and other documents that the sale of the cement was completed ex-ware house and not at the business premises of the purchasing dealer. Since no such document or books of accounts were produced by the petitioner, the initial presumption against it did not stand dislodged. We are therefore of the view that the impugned order of the Appellate Tribunal does not require any interference. The O.T.Revision fails and we dismiss the same by answering the questions of law raised against the assessee and in favour of the revenue.

**Sd/-**

**DR. A.K.JAYASANKARAN NAMBIAR  
JUDGE**

**Sd/-**

**SYAM KUMAR V.M.  
JUDGE**



**APPENDIX OF OT.REV 38/2018**

**PETITIONER ANNEXURES**

- ANNEXURE 1** TRUE COPY OF THE ASSESSMENT ORDER DATED 14/07/2014.
- ANNEXURE 2** TRUE COPY OF THE APPELLATE ORDER DATED 04/02/2017.
- ANNEXURE 3** TRUE COPY OF THE TRIBUNAL ORDER DATED 15/12/2017.
- ANNEXURE 4** TRUE COPY OF INVOICE DATED 23/09/2013.
- ANNEXURE 4(A)** TRUE COPY OF THE INVOICE DATED 18/10/2013.
- ANNEXURE 5** TRUE COPY OF LETTER DATED 17/12/2013 ISSUED BY M/S. MODERN STEELS, EDAPPAL.
- ANNEXURE 5(A)** TRUE COPY OF LETTER DATED 17/12/2013 ISSUED BY M/S. C.P. TRADERS, CALICUT.
- ANNEXURE 6** TRUE COPY OF THE REPLY DATED 14/07/2014.

**RESPONDENT'S ANNEXURES:NIL**

**TRUE COPY**

**P.A. TO JUDGE**