



2024:KER:74108

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 7TH DAY OF OCTOBER 2024/15TH ASWINA, 1946

O.T.REV.NO.126 OF 2019

AGAINST THE ORDER DATED 28.03.2019 IN T.A. (VAT).NO.1092
OF 2018 OF THE KERALA VALUE ADDED TAX/AGRL. INCOME TAX AND
SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE

REVISION PETITIONER (RESPONDENT/RESPONDENT/REVENUE):

THE STATE OF KERALA
REPRESENTED BY THE DEPUTY COMMISSIONER LAW
COMMERCIAL TAXES, ERNAKULAM.

BY SMT.RESMITHA RAMACHANDRAN, GOVERNMENT PLEADER

RESPONDENT (APPELLANT/APPELLANT/ASSESSEE):

M/S. VASAVA TRYE REMOULDING WORKS
SOUTH BAZAR, KANNUR 670 002.

BY ADV.SRI.N.MURALEEDHARAN NAIR

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY
HEARD ON 07.10.2024 ALONG WITH O.T.REV.NO.80/2019, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2024:KER:74108

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 7TH DAY OF OCTOBER 2024/15TH ASWINA, 1946

O.T.REV.NO.80 OF 2019

AGAINST THE ORDER DATED 24.01.2019 IN T.A.(VAT).NO.162
OF 2017 OF THE KERALA VALUE ADDED TAX/AGRL. INCOME TAX AND
SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE

REVISION PETITIONER (RESPONDENT/RESPONDENT/REVENUE) :

THE STATE OF KERALA
REPRESENTED BY THE DEPUTY COMMISSIONER(LAW) ,
COMMERCIAL TAXES, ERNAKULAM.

BY SMT.RESMITHA RAMACHANDRAN, GOVERNMENT PLEADER

RESPONDENT (APPELLANT/APPELLANT/ASSESSEE) :

M/S. VASAVA TYRE REMOULding WORKS
SOUTH BAZAR, KANNUR-670 002.

BY ADV.SRI.N.MURALEEDHARAN NAIR
BY ADV.SMT.K.HYMAVATHY

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY
HEARD ON 07.10.2024 ALONG WITH O.T.REV.NO.126/2019, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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ORDER**Dr. A.K. Jayasankaran Nambiar, J.**

As both these Revisions involve the same issue relating to the rate of tax applicable on the sale of retread rubber, pertaining to the assessment years 2011-12 and 2013-14 under the Kerala Value Added Tax Act, they are taken up together for consideration and disposed by this common order.

2. The Revision Petitions have been preferred by the State impugning orders of the Kerala Value Added Tax Appellate Tribunal that find that the rate of tax applicable on the sale of retread rubber that was used for the execution of a works contract should be @ 5% as contended by the assessee as against 12.5% / 14.5% as claimed by the Revenue. The assessee was engaged in retreading of tyre by using tread rubber manufactured by it for the purposes of resoling the tyres handed over to it by various customers. In essence, while carrying out the job of retreading, the assessee would use the tread rubber manufactured by it, and incorporate it into the old tyre that was brought by the customer through various processes, and on completion of the said processes, the tread rubber manufactured by it would



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effectively be fused in an inseparable manner on to the tyre that was brought by the customer. The fact that the entire process involves a works contract is not in dispute before us for, even in the bill raised by the assessee on the customer there are separate charges shown for the value of the tread rubber strips used by the assessee for the works contract undertaken and towards the labour component. The labour component, without anything more, in a bill issued by the assessee, would be sufficient indication that the job undertaken by the assessee for its customers involved a works contract and not a sale simplicitor.

3. The question then arises as to what would be the rate applicable to the tread rubber that was sold by the assessee to the customers in the course of execution of the works contract ? It is the case of the State that in as much as it is the transfer of goods not in the form of tread rubber but in some other form during the course of execution of the works contract, the applicable rate would be 12.5% / 14.5% for the assessment years 2011-12 / 2013-14 respectively.

4. Per contra, the stand of the assessee throughout has been that even if the nature of the transaction reveals it to be a works contract, in as much as the transfer of the goods was in the form of goods and not in some other form, it is the normal rate of tax applicable to the goods [5% ad valorem] that would apply.



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5. The Assessing Authority and the First Appellate Authority rejected the contention of the assessee by holding that the transfer of goods in the course of execution of the works contract was not in the form of goods but in some other form since the tread rubber strips used by the assessee had been fused into the old tyres that were brought by the customers and the goods manufactured by the assessee had lost their identity as those goods during the process of the works contract. The Appellate Tribunal, on the other hand, accepted the plea of the assessee and found that the transfer of the goods was in the form of goods and not in some other form. The appeals of the assessee were, therefore, allowed by the Tribunal by the orders that are now impugned before us by the State in these O.T. Revisions.

6. We have heard Smt.Resmitha Ramachandran, the learned Government Pleader appearing on behalf of the State and Sri.Muraleedharan Nair, the learned counsel appearing for the respondent/assessee in both these Revision Petitions.

7. Sri.Muraleedharan Nair, the learned counsel for the respondent/assessee would bring to our notice two clarificatory orders issued by the Department of Commercial Taxes, Kerala invoking Section 94 of the Kerala Value Added Tax Act. The first is an order



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dated 7.4.2016, which clarifies that the rate of tax applicable to tread rubber that is used by dealers undertaking tyre retreading works, would be @ 14.5% since the transfer of the goods in the course of execution of the works contract would not be in the form of goods but in some other form. The subsequent order dated 29.1.2020, however, clarifies that in view of newer technologies that had since been developed using 'pre-cured tread rubber', or 'cold process retreading', the tread rubber that was used in the retreading process of old tyres, could not be seen as having changed its design, chemical or physical properties after the retreading process except for fixing with cushion compound which was applied on the buffed tread area. Sri.Muraleedharan Nair, the learned counsel for the respondent/assessee would place emphasis on the latter order dated 29.1.2020 to contend that in the light of newer technologies available, the stand taken by this Court has now to be that the transfer of retread rubber in the course of retreading works is to be seen as a transfer of goods in the form of goods and not in some other form and therefore the Tribunal's view of upholding the rate of tax @ 5% had to be accepted.

8. Per contra, Smt.Resmitha Ramachandran, the learned Government Pleader, would invite our attention to the order dated 29.1.2020 of the authority for clarification to point out that the



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changed interpretation by the Department came about only because of newer technologies that were noticed in the years 2016 and 2020, and since in the instant Revision Petitions, we are concerned with the assessment years 2011-12 and 2013-14 respectively, it would be the earlier order dated 7.4.2016 that held the field in as much as the assessee's case for the said assessment years are concerned.

On a consideration of the rival submissions, we find that apart from the fact that the clarificatory order dated 7.4.2016 admittedly governed the parties for the assessment years 2011-12 and 2013-14 respectively, the process adopted by the assessee for the purposes of retreading works involved the incorporation of a tread rubber strip manufactured by it on to the old tyres that were brought by the customers for retreading. The process of works contract apparently involved the scraping of the outer layer of the old tyre so as to make it suitable for the affixation/fusion of the tread rubber strips manufactured by the assessee onto it. There may have been other processes including vulcanization which were necessary for the purposes of effective retreading done on an old tyre. In our view, the processes undertaken by the assessee were sufficient to rob the tread rubber strips manufactured by it of their original identity and shape while being incorporated into the works contract of retreading the old tyre. We therefore find, as rightly noticed by the First Appellate



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Authority and in the clarificatory order dated 7.4.2016, that the transfer of goods involved in the execution of the works contract in the instant cases was not in the form of goods but in some other form. We are therefore of the view that the impugned orders of the Appellate Tribunal cannot be legally sustained. The appropriate rate of tax on the sale of tread rubber by the assessee would have to be taken as @ 12.5% for the assessment year 2011-12 and 14.5% for the assessment year 2013-14. The O.T. Revisions are thus disposed by answering the questions of law raised in favour of the Revenue and against the assessee.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

prp/8/10/24



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APPENDIX OF O.T.REV.NO.126/2019

PETITIONER'S ANNEXURES:

ANNEXURE A: THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32120722844/2013-14 DAD 20.05.2016 PASSED BY THE COMMERCIAL TAX OFFICER IIIRD CIRCLE KANNUR RELATING TO THE YEAR 2013-14.

ANNEXURE B: THE TRUE COPY OF THE ORDER DATED 23.03.2018 PASSED BY THE ASSISTANT COMMISSIONER (APPEALS), COMMERCIAL TAXES, KANNUR IN KVATA NO.1120/16.

ANNEXURE C: THE CERTIFIED COPY OF THE ORDER DATED 28.03.2019 PASSED BY THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHICODE IN T.A. (VAT).NO.1092/2019.



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APPENDIX OF O.T.REV 80/2019

PETITIONER'S ANNEXURES:

ANNEXURE A: THE TRUE COPY OF THE ASSESSMENT ORDER NO.32120722844/2011-12 DATED 16.06.2014 PASSED BY THE COMMERCIAL TAX OFFICER, IIIIRD CIRCLE, KANNUR RELATING TO THE YEAR 2011-12.

ANNEXURE B: THE TRUE COPY OF THE ORDER DATED 25.03.2017 PASSED BY THE ASSISTANT COMMISSIONER (APPEALS), COMMERCIAL TAXES, KANNUR IN KVATA NO.1347/2014.

ANNEXURE C: THE CERTIFIED COPY OF THE ORDER DATED 24.01.2019 PASSED BY THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL ADDITIONAL BENCH, KOZHIKODE IN TA(VAT) NO.162/2017.

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE