

HIGH COURT OF KERALA**Bench: Dr. Justice A.K. Jayasankaran Nambiar & Dr. Justice Kauser Edappagath****Date of Decision: 21st November 2023**

O.T.REV.NO.45 OF 2022

A.M.RAHMAN**Versus****STATE OF KERALA,****Legislation:**

Sections 11, 12, 94 of the Kerala Value Added Tax Act/Central Sales Tax Act (KVAT Act/CST Act)

Section 8(1) and 8(5) of the CST Act

Kerala Tax on Entry of Goods into Local Areas Act, 1994

Subject: Tax Revisions concerning assessments under KVAT and CST Acts for the years 2009-10 to 2012-13, focusing on the applicability of input tax credit and special rebate in light of exemption notifications under Section 8(5) of CST Act.

Headnotes:

Input Tax Credit & Special Rebate under KVAT Act – Assessment Years 2009-10 to 2012-13 – Petitioners, rubber dealers, entitled to input tax credit and special rebate under Sections 11 and 12 of KVAT Act for tax paid on local rubber purchases. [Para 2]

Exemption Notifications and Inter-State Sales – Notification under Section 8(5) of CST Act exempting natural rubber from CST – Impact on input tax credit for inter-state sales exempted from tax under 3rd proviso to Section 11(3) and Section 12(1) of KVAT Act. [Paras 3, 7]

Assessment Authority's View – Disallowance of input tax credit and special rebate for inter-state sales of exempted goods under Annexures-I and II

notifications, despite actual payment of CST under Section 8(1) of CST Act. [Para 3]

Appellate Tribunal Decision – Adjustment of CST paid on inter-state sales against demands raised due to disallowance of input tax credit, based on Annexure-VII notification clarifying the optionality of Annexures-I and II notifications. [Para 4]

High Court Judgment – Disposal of revisions without modification, affirming Tribunal's limited relief. Exemption notifications not optional in statutory context, affecting input tax credit entitlement. Questions of law answered against assesses and in favor of Revenue. [Para 7]

Referred Cases: NIL

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR HEARING ON 10.11.2023 ALONG WITH O.T.REV.NO.51 OF 2022 & CONNECTED CASES, THE COURT ON 21.11.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 21ST DAY OF NOVEMBER 2023/30TH KARTHIKA, 1945

O.T.REV.NO.51 OF 2022

**AGAINST THE ORDER DATED 15.11.2019 IN T.A.(VAT).NO.67/2017 OF THE
KERALA VALUE ADDED TAX/AGRL.INCOME TAX AND SALES TAX
APPELLATE**

TRIBUNAL, ADDITIONAL BENCH,

KOZHIKODE REVISION PETITIONER/APPELLANT/ASSESSEE:

**A.M.RAHMAN AGED 49
YEARS**

**PROPRIETOR, ARECODE TRADERS, KOODARANHI,
KOZHIKODE DISTRICT**

BY ADV.SRI.S.ANIL KUMAR (TRIVANDRUM)

BY ADV.SMT.M.K.HAJARA

BY ADV.SRI.C.RAMACHANDRAN

BY ADV.SRI.SABU C.J
BY ADV.SRI.M.RAJAGOPAL BY
ADV.SRI.RAHUL A.
BY ADV.SMT.APARNA ANIL

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY AND
COMMISSIONER OF STATE GOODS AND SERVICE TAXES,
TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM-695 002

BY SRI.V.K.SHAMSUDEEN, SR. GOVT. PLEADER

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR
HEARING ON 10.11.2023 ALONG WITH O.T.REV.NO.45 OF 2022 &
CONNECTED CASES, THE COURT ON 21.11.2023 DELIVERED THE
FOLLOWING:

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 21ST DAY OF NOVEMBER 2023/30TH KARTHIKA, 1945

O.T.REV.NO.52 OF 2022

AGAINST THE ORDER DATED 15.11.2019 IN T.A.(VAT).NO.69/2017 OF
THE
KERALA VALUE ADDED TAX/AGRL.INCOME TAX AND SALES TAX
APPELLATE

TRIBUNAL, ADDITIONAL BENCH,

KOZHIKODE REVISION PETITIONER/APPELLANT/ASSESSEE:

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THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR HEARING ON 10.11.2023 ALONG WITH O.T.REV.NO.45 OF 2022 & CONNECTED CASES, THE COURT ON 21.11.2023 DELIVERED THE FOLLOWING:

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 21ST DAY OF NOVEMBER 2023/30TH KARTHIKA, 1945

O.T.REV.NO.53 OF 2022

**AGAINST THE ORDER DATED 29.10.2019 IN T.A.(VAT).NO.283/2016 OF
THE
KERALA VALUE ADDED TAX/AGRL.INCOME TAX AND SALES TAX
APPELLATE**

TRIBUNAL, ADDITIONAL BENCH,

KOZHIKODE REVISION PETITIONER/APPELLANT/ASSESSEE:

SHABEER BABU T.P.

AGED 63 YEARS

**PROPRIETOR OF SACHIN TRADERS, THOTTUMKUKKOM,
PALLITHAZHA, KOZHIKODE DISTRICT,**

**REPRESENTED BY HIS POWER OF ATTORNEY HOLDER,
ABDULLA, S/O. ABDURAHIMAN.**

BY ADV.SRI.S.ANIL KUMAR (TRIVANDRUM)

BY ADV.SMT.M.K.HAJARA

BY ADV.SRI.C.RAMACHANDRAN

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BY ADV.SMT.APARNA ANIL

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA

REPRESENTED BY THE PRINCIPAL SECRETARY AND

**COMMISSIONER OF STATE GOODS AND SERVICE TAXES, TAX
TOWERS, KARAMANA, THIRUVANANTHAPURAM - 695002.**

BY SRI.V.K.SHAMSUDEEN, SR. GOVT. PLEADER

**THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR
HEARING ON 10.11.2023 ALONG WITH O.T.REV.NO.45 OF 2022 &
CONNECTED CASES, THE COURT ON 21.11.2023 DELIVERED THE
FOLLOWING:**

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 21ST DAY OF NOVEMBER 2023/30TH KARTHIKA, 1945

O.T.REV.NO.61 OF 2022

**AGAINST THE ORDER DATED 29.10.2019 IN T.A.(VAT).NO.284/2016 OF
THE**

**KERALA VALUE ADDED TAX/AGRL.INCOME TAX AND SALES TAX
APPELLATE**

TRIBUNAL, ADDITIONAL BENCH,

KOZHIKODE REVISION PETITIONER/APPELLANT/ASSESSEE:

SHABEER BABU T.P.

AGED 63 YEARS

**PROPRIETOR OF SACHIN TRADERS, THOTTUMKUKKOM,
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RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA

**REPRESENTED BY THE PRINCIPAL SECRETARY AND
COMMISSIONER OF STATE GOODS AND SERVICE TAXES,
TOWERS, KARAMANA, THIRUVANANTHAPURAM - 695002.**

TAX

BY SRI.V.K.SHAMSUDEEN, SR. GOVT. PLEADER

**THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR
HEARING ON 10.11.2023 ALONG WITH O.T.REV.NO.45 OF 2022 &
CONNECTED CASES, THE COURT ON 21.11.2023 DELIVERED THE
FOLLOWING:**

ORDER

Dr . A.K. Jayasankaran Nambiar, J.

As common questions of law have been raised in all these O.T. Revisions, they are taken up together for consideration and disposed by this common judgment.

2. These O.T. Revisions relate to the assessments under the Kerala Value Added Tax Act/Central Sales Tax Act [KVAT Act/CST Act] for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13 respectively. The petitioners are dealers of rubber and registered as such under the KVAT Act

and CST Act. They purchase raw rubber from registered dealers and also from growers and sells the same to registered dealers in the State as also to dealers outside the State by way of inter-state sales. It is not in dispute that the petitioners were entitled to avail input tax credit under Section 11 or special rebate under Section 12 of the KVAT Act in respect of the tax paid by them at the time of purchase of raw rubber under Section 6(1) or Section 6(2) of the KVAT Act, as the case may be. Further, under normal circumstances, in terms of Section 11 of the KVAT Act, they could utilise the input tax to pay the output tax on sales effected by them to registered dealers in the State or to dealers outside the State. In the latter event, they would be able to utilise only such extent of the input tax as was equal to the CST paid by them and the excess unutilised input tax would be dealt with in accordance with Section 11(6) of the KVAT Act. Similarly, in respect of rubber procured from growers that was ultimately sold outside the State, they would be entitled to special rebate under Section 12 of the KVAT Act. It is pertinent however that by virtue of the 3rd proviso to Section 11(3) of the KVAT Act, where the inter-state sales are exempted from tax, then the input tax credit could be availed only in an amount in excess of 4% / 5% of the purchase turnover of the goods sent outside the State. The 3rd proviso to Section 11(3) of the KVAT Act and the 3rd proviso to Section 12(1) of the KVAT Act read as follows:

Section 11(3):

“Provided also that where any goods purchased in the State are subsequently sent to outside the State or used in the manufacture of goods and the same are sent out side the State otherwise than by way of sale in the course of inter-State trade or export or where the sale in the course of inter-State trade is exempted from tax, input tax credit under this section shall be limited to the amount of input tax paid in excess of five per cent on the purchase turnover of such goods sent outside the State.

Section 12(1):

Provided also that where the goods in respect of which tax under sub section (2) of section 6 or under section 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 has been paid, are sent outside the State or used in the manufacture of goods and the same are sent outside the State, otherwise than by way of sale in the course of inter-

state trade or export or where the sale in the course of interstate trade is exempted from tax, the special rebate under this section shall be limited to the amount of such tax paid in excess of four percent.”

3. In the case of the petitioners, it is not in dispute that they paid CST in accordance with Section 8(1) of the CST Act, and hence, under normal circumstances, they would have been entitled to take input tax credit of the tax paid at the time of purchase of the rubber within the State/in accordance with Section 11/12 of the KVAT Act. The Assessing Officer, however, was of the view that in view of Annexures-I and II notifications dated 31.07.2008 and 30.11.2011 respectively, that were issued by the State Government in exercise of its powers under Section 8(5) of the CST Act, natural rubber that had suffered tax within the State under the KVAT Act was exempted from payment of CST and hence, the petitioners had to be seen as having effected an inter-state sale of exempted goods for the purposes of the 3rd proviso to Section 11(3) and the 3rd proviso to Section 12(1) of the KVAT Act. He accordingly found that the input tax credit and special rebate availed by the petitioners could not be allowed notwithstanding the fact that the petitioners may have actually paid output tax in terms of Section 8(1) of the CST Act on their inter-state sales. While passing the assessment orders as aforesaid, the Assessing Authority relied on the clarificatory order passed by the Authority for Clarification in relation to the petitioners which took the same view. Effectively therefore, the Assessing Authority rejected the stand of the petitioners that the exemption under Annexures-I and II notifications was merely optional and could not be viewed as mandatory.

4. Although the petitioners carried the matter in appeal before the First Appellate Authority, they were not successful. In a further appeal before the Appellate Tribunal, the petitioners contended that by virtue of Annexure-VII notification that was issued in 2019 and had clarified that Annexures-I and II

notifications were optional and that the said treatment of those notifications had to be with retrospective effect to cover the periods covered by these O.T. Revisions, the petitioners could avail input tax credit despite the payment of CST on inter-state sales. The Appellate Tribunal found force in the said contention of the petitioners and allowed them to adjust the CST amounts paid by them during the said assessment years on inter-state sales towards the demand raised on them pursuant to disallowance of the input tax credit availed in respect of inter-state sales.

5. The petitioners however were not satisfied with the orders of the Appellate Tribunal and have impugned the same in these O.T. Revisions. It is their contention that inasmuch as Annexures-I and II notifications were optional exemption notifications issued under Section 8(5) of the CST Act, it was upto to the petitioners to choose whether or not to avail the exemption under those notifications and in situations where they had admittedly chosen to pay CST under Section 8(1) of the CST Act on the inter-state sales effected by them, they have to be seen as entitled to the input tax credit in terms of Section 11/Section 12 of the KVAT Act of the tax paid by them on local purchases. In short, it is the contention of the petitioners that Annexures-I, II and VII notifications providing for exemption from payment of CST on inter-state sales of rubber cannot have any application to them for, having paid CST, their entitlement to input tax credit on tax paid on rubber purchased within the State has to be determined solely by the provisions of Section 11/Section 12 of the KVAT Act. The petitioners have therefore raised the following questions of law:

- A. On the facts and in the circumstances of the case, is the Hon'ble Kerala Value Added Tax Appellate Tribunal justified in dismissing the appeal filed by the petitioner against Annexure-V order of the Dy. Commissioner

(Appeals)-I, Kozhikode upholding Annexure-IV order of the Asst. Commissioner (Assessment), Special Circle-II, Kozhikode?

B. After having observed, "By virtue of notification bearing No.521/19 dated 07.08.2019 a proviso has been added to the notification hearing SRO No.753/11, which says that, provided that this notification shall be optional to those who continue to pay tax under sub section (1) of section 8 of Central Sales Tax Act, 1956 (Central Act 74 of 1956) for the period from 31st day of July 2008 upto and including 30th June 2017" is the Hon'ble Appellate Tribunal justified in its finding that the dealers engaged in interstate sale have the liability to pay tax due to under the KVAT Act, 2003, where the explanatory note to the notification S.R.O.521/19 dated 07.08.2019 makes it amply clear that those who have continued to pay tax as per sub-section (1) of section 8 of the said Act shall remain outside the purview of notification S.R.O.753/2011?

C. Where notification S.R.O.753/2011 was issued in supersession of notification S.R.O.No.804/08, is the Hon'ble Appellate Tribunal justified in having placed reliance on notification S.R.O.No.804/08 to hold that interstate sales of rubber was exempted and then to hold that by virtue of rule 12A of the Kerala Value Added Tax Rules the input tax credit or special rebate in relation to the rubber sole by the petitioner interstate has to be disallowed, overlooking the proviso to S.R.O.753/2011 inserted by S.R.O.521/2019?

D. Is the Hon'ble Appellate Tribunal justified in overlooking the mandatory provisions of the 2nd proviso to sub-section (1) and sub-section (3) of section 12 and sub-section (6) of section 11 of the Act to assume that persons making interstate sales of rubber are not entitled to input tx creit or special rebate even when tax had been collected in accordance with the provisions of section 8(1) of the CST Act and C forms issued by the buyers outside the State, as is evident from the return filed by the petitioner?

E. Is the interpretation given by the Hon'ble Appellate Tribunal to the notification S.R.O.753/2011 as amended by notification S.R.O.521/2019 correct according to the settled rules of interpretation of statutes?

6. We have heard Sri.S.Anil Kumar, the learned counsel for the petitioners in all these O.T.Revisions and Sri.V.K.Shamsudeen, the learned senior Government Pleader appearing on behalf of the respondent State.

7. On a consideration of the rival submissions, we are of the view that while the contention of the petitioners, relying on the provisions of Section 11/Section 12 of the KVAT Act, may appear persuasive at first blush, on a closer scrutiny of the statutory provisions, we find ourselves unable to accept the said contention. The exemption envisaged in Annexures-I and II notifications has to be seen in the context of the statutory provisions governing input tax credit under the KVAT Act, namely, Sections 11 and 12 therein. While *de hors* the said provisions, Annexures-I and II notifications may probably be seen as conferring an optional exemption in respect of the tax payable under Section 8(1) of the CST Act, in view of the specific provisions of the 3rd proviso to Section 11(3) and the 3rd proviso to Section 12(1) of the KVAT Act extracted above, we cannot find it in ourselves to read the exemption notifications as optional in the particular statutory context. Since the statutory provisions under the KVAT Act restrict the availment of input tax credit to only such situations where tax is payable on outward sales and there is a prohibition against availment of input tax credit in situations where the outward inter-state sale is exempted, the issuance of the exemption notification by the State Government under Section 8(5) of the CST Act must be seen as bringing into operation the prohibition under the 3rd proviso to Section 11(3) in respect of input tax credit and the 3rd proviso to Section 12(1) in the case of special rebate. Thus, the question really is not whether the petitioners had an option to avail the exemption envisaged in the notifications or not; rather, the point is that by virtue of the notifications aforementioned, the inter-state sale of rubber had to be seen as exempted

for the purposes of the 3rd proviso to Section 11(3) and the 3rd proviso to Section 12(1) of the KVAT Act. The petitioners were therefore not entitled to avail input tax credit of the tax paid on purchases of rubber within the State so long as Annexures-I and II notifications were in force and operational. The amendments to the said notifications in 2019, with retrospective effect, only enable those who had paid CST in terms of Section 8(1) of the CST Act to adjust the said payments towards the demands served on them consequent to the disallowance of the input tax credit/special rebate availed by them. We therefore find that the impugned order of the Tribunal which grants the petitioners the limited relief aforesaid does not require modification or interdiction in our hands. These O.T.Revisions are therefore disposed by answering the questions of law raised therein against the assesseees and in favour of the Revenue.

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