Indian Rare Earths Ltd. Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: May 31, 2006

Citation: (2006) 3 KLT 401 : (2007) 6 VST 641

Hon'ble Judges: V. Ramkumar, J; K.S. Radhakrishnan, J

Bench: Division Bench

Advocate: Antony Dominic, A.K. Jayasankar Nambiar and Anil D. Nair, for the Appellant; Georgekutty Mathew, Government Pleader (Taxes), for the Respondent

Final Decision: Allowed

Judgement

K.S. Radhakrishnan, J.
This tax revision case arises out of the order passed by the Sales Tax Appellate Tribunal, Thiruvananthapuram.

Assessee is a Government of India undertaking. The KGST assessment for the year 1992-93 was completed vide Annexure-A order dated 27-

11-1999. Assessing Officer had noticed that the assessee has not included in the turnover all amounts received by way of despatch money. The

said fact was noticed when the profit and loss account was verified by the assessing authority. Assessee contended before the assessing authority

that the despatch money amounting to Rs. 8,55,664/- is an incentive received during the work of export and since the entire export was exempted

from sales tax the despatch money also may be treated as export sale and be exempted from levying tax under the KGST Act. Assessee had

pointed out that despatch money is based on the day saved by the shippers due to early loading of cargo. Since the assessee had not substantiated

that contention assessing authority assessed sales tax on the said amount as well. Aggrieved by the said order assessee took up the matter before

the Deputy Commissioner (Appeals). Appeal was rejected. Matter was then taken up before the Tribunal. Tribunal also concurred with the view

of the assessing authority and rejected the appeal. Aggrieved by the same this tax revision case has been preferred.

2. The only question to be considered is whether the Tribunal is right in confirming the inclusion of a turnover of Rs. 8,55,664/- being despatch

money received by the assessee from the shipping company for early loading and despatching of ship as forming part of the taxable turnover.

Assessee has produced Annexure-D agreement entered into between the assessee and the shipping company and Annexure-E agreement entered

into between the assessee and the contractors dated 22-12-1992. Clause 21 of Annexure-D is relevant for our purpose which is extracted

hereunder for easy reference:

The contractor takes notice that the Company will be liable to pay demurrage to the ship owners if the average rate of loading per day is below

1000 tonne and the company is also eligible to earn despatch money when the average loading rates is more than the agreed tonnage. For loading

ilmenite in excess 1200 a MT a day on the average during the shipping season the Contractor will be eligible in receive 25% of the despatch

money for the excess over 1000 MT of loading per day. If however, the average exceeds 1200 MT per day for the quantity in excess of this 1200

MT the Contractor would be entitled to 50% of the despatch money per tonne in respect of such excess. To illustrate, if during a shipping season

the average rate is 1100 MT per day the Contractor would be eligible for 25% of the despatch money per tonne for 100 tonnes. On the other

hand if the average rate is 1300 MT the contractor will be paid 25% of the despatch money per tonne for 200 MT and 50% of the despatch

money per tonne on 100 tonnes.

We fail to see how the Sales Tax authorities can impose tax on the amount received by the assessee by way of despatch money. The amount

received by the assessee by way of despatch money does not represent any sale consideration as it is incentive for early despatch of the ship. We

are of the view the assessee is not claiming any exemption and the Tribunal has wrongly cast burden on the assessee by holding that assessee is

claiming exemption. The specific case of the assessee is that the amount of Rs. 8,55,664/- was received by way of despatch money. Agreement

produced by the assessee would clearly show that there is specific provision for payment of despatch money. In the profit and loss account of the

assessee it is specifically stated that an amount of Rs. 8,55,664/- was received by the assessee by way of despatch money. Burden is on the

revenue to show that the assessee had entered into any transaction which falls within the purview of KGST Act while receiving the despatch

money. If it is an inter-state sale the provisions of KGST Act may not apply. The transaction entered into between the assessee and the shipping

company would not show imposition of taxable turnover since the transaction was not connected with export of goods. Consequently the

provisions of KGST Act would not apply.

3. Under such circumstance we are in agreement with the assessee that the despatch money received by the assessee cannot be subjected to any

tax under the KGST Act. We are therefore inclined to allow this revision and set aside the order passed by the authorities below. We hold that the

assessing authorities cannot demand tax under the KGST Act on the despatch money received by the assessee.

Tax revision case is allowed as above.