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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4998 OF 2008
(Arising out of S.L.P.(C) No.10325/2007)

Alagendran Exports Pvt. Ltd.

...Appellant(s)

Versus

State of Kerala

...Respondent(s)

ORDER

Leave granted.

This Civil Appeal is directed against the judgment and order dated 29th August, 2006 passed by the Kerala High Court in S.T.Rev.No.104/2004. By the impugned order, the Revision filed by the appellant herein stood dismissed on the ground that the issue is covered by the decision of this Court in the case of State of Karnataka Vs. B.M. Ashraf & Co [(1997) 107 STC 571].

The appellant is a private limited Company incorporated under the Companies Act, engaged in the business of export of cashew kernels. It has purchasing depots in the State of Kerala for the purchase of cashew kernels for exports.

During the Assessment Year 1998-1999, the appellant claims to have purchased cashew kernels for the value of Rs.1,92,67,236/-

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from the registered dealers within the State of Kerala for the purposes of export. According to the appellant, the said purchases were covered by declarations in Form 18A. The appellant claims that since the said purchases were covered by declarations in Form 18A, the transactions stood covered by Section 5(3) of the Central Sales Tax Act, 1956 (1956 Act, for short) and such purchases/sales were not liable to tax within the State of Kerala.

In this case, the Department had issued a pre-assessment notice dated 5th March, 2003 in which it was alleged that the appellant had failed to produce any evidence indicating payment of tax on purchases made by it from the local dealer and, consequently, the

appellant was liable to pay tax under Section 5A of the Kerala General Sales Tax Act, 1963 (1963 Act, for short). This allegation was denied by the appellant in its reply to the notice dated 5th March, 2003. By order dated 20th March, 2003, the Assessing Officer (AO) held that since the goods were either stock transferred or effected vide deemed export sales, the purchases were liable to tax under Section 5A of the 1963 Act. The AO further held that the appellant had not produced any evidence to show payment of tax on the cashewnut kernels purchased by it locally. Consequently, the Returns filed by the appellant stood rejected.

Aggrieved by the Order passed by the AO, the appellant carried

the matter in S.T.A.Nos.380 ² & 381/03 before the Deputy Commissioner (Appeals). The Appeal was dismissed. While dismissing the Appeal, the Deputy Commissioner (A) held that the appellant was unable to prove that the purchases were from registered dealers and, therefore, according to the Deputy Commissioner, the Assessing Authority was right in assessing the turnover to tax under Section 5A of the 1963 Act. Accordingly, the Deputy Commissioner (A) dismissed the Appeal filed by the appellant herein. This order has been confirmed by the Tribunal in Second Appeal and finally by the High Court. Hence, this Civil Appeal.

In this case, there is total confusion regarding the facts. The transactions undertaken cover exports and deemed exports sale. In this Civil Appeal, we are concerned only with the question as to whether the purchases of the value of Rs.1,92,67,236/- made by the appellant were purchases in the course of export and, if so, whether the said transactions stood covered by Section 5(3) of the Central Sales Tax Act, 1956 and, consequently, not liable to tax under Section 5A of the 1963 Act.

It appears from the records that the authorities below rejected the claim of the appellant on the ground that the appellant had purchased cashew kernels from unregistered dealers in the State. This allegation has been denied by the appellant. In our view, the most

important aspect, which has not been decided by the AO, is whether the purchases made by the appellant were in the course of export in terms of Section 5(3) of the 1956 Act. It appears from the Memo of Appeal filed before the Appellate Tribunal that the appellant had produced Trading Accounts and details of purchases for the Assessment Year 1998-1999, list of domestic purchases supported by sale bills issued by registered dealers within and outside the State against Form 18A, prior purchase orders of foreign buyers, copies of export invoices, bill of lading and other records. In such matters, it is the duty of the AO to collate the facts and ascertain whether the purchased cashew kernels worth Rs.1,92.67,236/- were effected in the course of export. Applicability of B.M.Ashraf's case (supra) would depend on the factual foundation. In this case, that factual foundation is missing.

Therefore, in our view, the matter needs to be remitted to the Deputy Commissioner (Appeals)-I, Commercial Taxes, Ernakulam. We make it clear that the Deputy Commissioner (A) will consider the averments in the Memo of Appeal filed by the appellant herein and decide the matter after taking into consideration the documents referred to herein-above and give a finding as to whether the purchases worth Rs.1,92,67.236/- were effected in the course of exports or not. For that purpose, the Deputy Commissioner (A) will have to ascertain the exact date of purchase from the local market, the date on which the

appellant received the export orders from foreign buyer, copy of export invoices, bills of lading etc. Lastly, the Deputy Commissioner (A) will also examine the question as to whether the appellant itself effected exports or whether, in turn, the appellant sold the goods in question to other exporters. All these questions are required to be decided only in the context of purchases effected by the appellant worth Rs.1,92,67,236/-.

For the afore-stated reasons, Civil Appeal is allowed and the matter is remitted to the Deputy Commissioner (A) to decide the afore-stated aspect once again in accordance with law.

(Signed order is placed on the file)