

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 31ST JULY 2006 / 9TH SRAVANA 1928

ST.Rev..No. 85 of 2003()

TA.338/1998 of STAT ADDL.BENCH, KOTTAYAM
.....

REVISION PETITIONER/APPELLANT

M/S. ASSOCIATED TRADERS,
MIG-417, PANAMPILLY NAGAR, COCHIN-36.

BY ADV. SRI.V.P.SUKUMAR
SRI.JAIRAM.V.MENON

RESPONDENTS: RESPONDENT

STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIATE, THIRUVANANTHAPURAM.

BY SPL. GOVERNMENT PLEADER SRI.V.V.ASOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 31/07/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. No.85 of 2003
.....

Dated this the 31st day of July, 2006.

JUDGMENT

Ramachandran Nair, J.

The only dispute raised in the T.R.C. is against levy of tax under Section 5A on Rs.1 lakh representing purchase turnover of veneers by the petitioner for export. The Tribunal rejected petitioner's claim and sustained demand because petitioner's purchase was not accounted as local sale by the seller. The specific case of the petitioner is that veneer was purchased against prior order for export and supplier accordingly collected Form 18A with bill of lading and sold goods to petitioner without collection of tax. If these are the facts, then obviously the sale to petitioner is a deemed export sale under Section 5(3) not liable to be assessed. However, strangely the Tribunal has not looked into whether supplier was granted exemption under Section 5(3) on the very same transaction and if petitioner's case stands proved, then the very same transaction cannot be assessed under Section 5A in the hands of the petitioner. If exemption was not granted to the supplier, then of course supplier should have been assessed as they are registered dealers if the sales are accounted as local sales in Kerala. Since facts are not on record, we direct the officer to verify the assessment record of the supplier and verify whether exemption is granted on the turnover of Rs.1 lakh representing sale of veneers to petitioner based on Form 18A and other documents produced by the supplier. If

the assessment record of the supplier disclose exemption being granted to the supplier, then the Tribunal's order will stand modified cancelling the petitioner's assessment under Section 5A. On the other hand if exemption is not seen granted, then the T.R.C. will stand dismissed.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

S.T.R.V. No.85 of 2003

JUDGMENT

Dated 31.7.2006