

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HON'BLE THE CHIEF JUSTICE DR. MANJULA CHELLUR
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 31ST DAY OF MARCH 2014/10TH CHAITHRA, 1936

ST.Rev.No. 38 of 2013

**[AGAINST THE ORDER OF THE KERALA AGRICULTURAL INCOME TAX &
SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM]**
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REVISION PETITIONER/RESPONDENT/REVENUE:

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

BY GOVERNMENT PLEADER SRI. BOBBY JOHN.

RESPONDENT/APPELLANT/ASSESSEE:

**M/S. INDIAN OIL CORPORATION LTD.,
ERNAKULAM, PIN - 682 036.**

BY ADV. SRI.JOSE JOSEPH,

**THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 31-03-2014, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Prv.

S.T. REV. NO.38/2013:

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A:** TRUE COPY OF THE ASSESSMENT ORDER DTD. 23/11/2009
PASSED BY THE ASSISTANT COMMISSIONER (ASSMT),
SPECIAL CIRCLE-II, COMMERCIAL TAXES, ERNAKULAM.
- ANNEXURE B:** TRUE COPY OF THE FIRST APPELLATE ORDER DTD. 24/05/2010
PASSED BY THE DEPUTY COMMISSIONER (APPEAL),
COMMERCIAL TAXES, KOTTAYAM CAMP AT ERNAKULAM.
- ANNEXURE C:** TRUE COPY OF THE ORDER DTD. 29/01/2013 OF THE KERALA
AGRICULTURAL INCOME TAX & SALES TAX APPELLATE
TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM IN
T.A. NO.184/2010.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.A. TO JUDGE.

Prv.

MANJULA CHELLUR C.J.

&

A.M.SHAFFIQUE, J.

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S.T.Rev.No.38 of 2013

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Dated this the 31st day of March, 2014

JUDGMENT

Shaffique, J

This revision is filed by the revenue challenging the order passed by the Sales Tax Appellate Tribunal in T.A.No.184/2010.

2. The appeal was filed by the respondent herein, inter alia, challenging the decision of the Assessing Officer and Deputy Commissioner (Appeals), in so far as the respondent was denied the benefit of Rule 9(i) of the KGST Rules, 1963.

3. The issue is with reference to the exclusion of delivery charges on 'delivered goods' from the total turnover in terms of the aforesaid Rules. The assessing officer did not grant the said benefit, against which an appeal was filed by the assessee which was confirmed by the first appellate authority. Before the Tribunal, the assessee had produced certain copies of the invoices, which according to the Tribunal, reveals that freight

charges are shown separately. The assessee also relied upon the decision in **Vinod Coal Syndicate v. Commissioner of Sales Tax U.P.**(73 STC 317), in support of their claim that they are entitled for exclusion of the delivery charges on 'delivered goods', whether it is called delivery assistance charges or freight charges as the case may be, in order to claim the said exclusion.

4. The Tribunal found that, in the light of the judgment of the Supreme Court in **Vinod Coal Syndicate**'s case (supra), the assessing officer has to verify whether the evidence produced by the assessee can be accepted and whether the assessee is entitled for benefit of exclusion in terms of Rule 9(i) of the KGST Rules.

5. The apprehension expressed by the Revenue while framing the questions of law is that, Tribunal has entered into a finding by stating that the invoices produced by the assessee contains separate freight charges. We do not think so. The Tribunal had only verified a few of the invoices which apparently indicated that freight charges were separately shown. It does not mean that the Tribunal had entered into a finding in respect of that matter. Tribunal had remitted the matter back to the

Assessing Officer to consider the evidence and come to a finding in regard to the same.

6. The short question was whether the assessee was entitled for exclusion under Rule 9(i) under KGST Rules read with judgment in **Vinod Coal Syndicate**'s case (supra). Since the matter is only remitted back to the assessing officer for a reconsideration of issue, there is no reason for the apprehension expressed by State that the Tribunal has arrived at a finding in regard to the invoices produced.

In the result, we do not find any good ground to interfere with the orders passed by the Tribunal. Accordingly, the revision is dismissed.

**MANJULA CHELLUR,
CHIEF JUSTICE**

A.M.SHAFFIQUE, JUDGE.