



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 2<sup>ND</sup> DAY OF SEPTEMBER 2024 / 11TH BHADRA, 1946

OT.REV NO. 53 OF 2023

AGAINST THE ORDER DATED 29.06.2023 IN TA(VAT) NO.459 OF 2018 OF KERALA VALUE ADDED TAX/AGRL.INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE

REVISION PETITIONER/RESPONDENT/APPELLANT:

CASTROL INDIA LTD.  
C/O M.K ASSOCIATES, KONNANPUDUR, KANJIKODE, PALAKKAD  
REPRESENTED BY SRI RAVINDRA GAWANDE, HEAD OF TAXES.,  
PIN - 678621

BY ADVS.  
SRI.S.ANANTHAKRISHNAN  
SRI.A.KUMAR  
SMT.G.MINI

RESPONDENT/APPELLANT/RESPONDENT:

STATE OF KERALA  
REPRESENTED BY SECRETARY, TAXES DEPARTMENT  
THIRUVANANTHAPURAM-, PIN - 695001

BY SENIOR GOVERNMENT PLEADER SRI.V.K.SHAMSUDHEEN.

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 02.09.2024, ALONG WITH OT.REV.54/2023, 55/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 2<sup>ND</sup> DAY OF SEPTEMBER 2024 / 11TH BHADRA, 1946

OT.REV NO. 54 OF 2023

AGAINST THE ORDER DATED 29.06.2023 IN TA(VAT) NO.461 OF 2018 OF KERALA VALUE ADDED TAX/AGRL.INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH,KOZHIKODE

REVISION PETITIONER:

CASTROL INDIA LTD.  
C/O M.K ASSOCIATES, KONNANPUDUR, KANJIKODE, PALAKKAD  
REPRESENTED BY SRI RAVINDRA GAWANDE, HEAD OF TAXES.,  
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RESPONDENT:

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REPRESENTED BY SECRETARY, TAXES DEPARTMENT  
THIRUVANANTHAPURAM-, PIN - 695001

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THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 02.09.2024, ALONG WITH OT.Rev.53/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 2<sup>ND</sup> DAY OF SEPTEMBER 2024 / 11TH BHADRA, 1946

OT.REV NO. 55 OF 2023

AGAINST THE ORDER DATED 29.06.2023 IN TA(VAT) NO.460 OF 2018 OF KERALA VALUE ADDED TAX/AGRL.INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH,KOZHIKODE

REVISION PETITIONER:

CASTROL INDIA LTD.  
C/O M.K ASSOCIATES, KONNANPUDUR, KANJIKODE, PALAKKAD  
REPRESENTED BY SRI RAVINDRA GAWANDE, HEAD OF TAXES.,  
PIN - 678621

BY ADVS.  
SRI.S.ANANTHAKRISHNAN  
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SMT.G.MINI

RESPONDENT:

STATE OF KERALA  
REPRESENTED BY SECRETARY, TAXES DEPARTMENT  
THIRUVANANTHAPURAM-, PIN - 695001

BY SENIOR GOVERNMENT PLEADER SRI.V.K.SHAMSUDHEEN.

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 02.09.2024, ALONG WITH OT.Rev.53/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 2<sup>ND</sup> DAY OF SEPTEMBER 2024 / 11TH BHADRA, 1946

OT.REV NO. 56 OF 2023

AGAINST THE ORDER DATED 29.06.2023 IN TA(VAT) NO.458 OF 2018 OF KERALA VALUE ADDED TAX/AGRL.INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH,KOZHIKODE

REVISION PETITIONER:

CASTROL INDIA LTD.  
C/O M.K ASSOCIATES, KONNANPUDUR, KANJIKODE, PALAKKAD  
REPRESENTED BY SRI RAVINDRA GAWANDE, HEAD OF TAXES.,  
PIN - 678621

BY ADVS.  
S.ANANTHAKRISHNAN  
A.KUMAR  
G.MINI

RESPONDENT:

STATE OF KERALA  
REPRESENTED BY SECRETARY, TAXES DEPARTMENT  
THIRUVANANTHAPURAM-, PIN - 695001

BY SENIOR GOVERNMENT PLEADER SRI.V.K.SHAMSUDHEEN.

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 02.09.2024, ALONG WITH OT.Rev.53/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## O R D E R

### **Dr. A.K.Jayasankaran Nambiar, J.**

In all these OT. Revision Petitions, among the questions of law raised therein, the only two that arise for consideration are the following, which we have chosen to paraphrase as under:

“Whether in law the Tribunal can adopt the stock transfer value as per the Form F alone as the basis for levy of tax as the absolute criteria when the actual sale price realized is not the notional value assigned in the stock transfer and there is no material to support the said adoption of notional value?”

Whether in the facts and circumstances of the case and in the absence of any material on record, the assessing authority was legally correct in presuming that the petitioner has sold the goods at the stock transfer value and collected more amount than what is reflected in the local sales invoice?”

2. It would appear that the assessing authority for the assessment years 2009-2010, 2012-2013, 2013-2014, and 2014-2015 respectively, completed the assessments under the KVAT Act by adopting the value shown in the stock transfer invoices but without alleging any suppression of accounted turnover and without rejecting the books of accounts produced by the assessee for any valid reason.



3. In an appeal preferred by the assessee before the First Appellate Authority, it was pointed out that the value shown in the stock transfer invoice was the Equalized List Price, which the assessee had worked out for the stock transfer of the product all over India. In other words, the explanation offered by the assessee was that a given product could be purchased by a dealer at the same price across the country and this was done so as to prevent cross-border sales/purchases, and the Equalized List Price was determined based on various factors such as difference in distance and freight between different States, difference in prevailing VAT rates and other State taxes in the different States. To determine the sale price in a particular State, the base price was configured as the Equalized List Price – the VAT rate of the State so that after charging sales tax, the price for the dealer concerned would remain constant in all States. This ensured that each State would have a different base price for the same product. Whenever a transfer document was raised by the sending location, the stock transfer invoice would pick up the base price of the sending State, and the said price would be reflected in the invoice. The assessee, thereafter, explained that when the sale was effected to a dealer, a trade discount/distributor discount/cash discount would be applied to the equalized list price as arrived at above and it was on this discounted price that was collected from the dealer that VAT was paid by the assessee.

4. The First Appellate Authority found force in the contention of the assessee that in the absence of any allegation of suppression or detection of actual suppression or rejection of the books of accounts of the assessee, there was no justification for disbelieving the invoice value declared by the



assessee on the sale of products to its dealers. The First Appellate Authority therefore set aside the assessment order and allowed the appeal in favour of the assessee.

5. In further appeals carried by the Department before the Tribunal, the Appellate Tribunal set aside the orders of the First Appellate Authority and restored the order of the assessing authority by relying on the decision of a Division Bench of this Court in the judgment dated 18.11.2008 in S.T.Rev. No.306 of 2008 [**M/s.Group Pharmaceuticals Ltd v. State of Kerala**].

6. Before us, it is the submission of the learned Senior counsel Sri.A.Kumar assisted by Smt.G.Mini and Sri.S.Ananthakrishnan on behalf of the revision petitioners assessee that in view of the fact that there was no rejection of the books of accounts of the assessee, as also a complete absence of any finding regarding suppression of turnover, there was no justification whatsoever for the assessing authority or the Appellate Tribunal to have disbelieved the price at which the assessee had sold its goods to dealers after offering them the discounts wherever applicable. Reliance is placed on the judgment of this Court in **Minar Castings Pvt.Ltd. (M/s), Kanjikode v. State of Kerala [2020 KHC 340]**, which in turn relied on an earlier Division Bench judgment of this Court in **Classic Marbles v. State of Kerala [(2009) 25 VST 295 (Ker)]**, to contend that even in the case of the best judgment assessment an assessing authority is expected to assign valid reasons, firstly, for rejecting the books of account and the return filed by the assessee and secondly that the assessing



authority, cannot on mere assumptions and presumptions, make additions to the conceded turnover or the conceded gross profit in the returns filed. There had to be a valid reason for an assessing authority to reject the returns filed and to proceed with the best judgment assessment.

7. Per contra, it is the submission of the learned Senior Government Pleader Sri.V.K.Shamsudheen that the view taken by the Division Bench of this Court in **M/s.Group Pharmaceuticals Ltd (Supra)** has been followed in another Division Bench judgment dated 30.11.2018 in ST.Rev.No.191 of 2008. He points out that it cannot be believed that a manufacturer would sell his products to his dealers at a price significantly lower than the cost price, which was declared in the statutory F Forms. He submits, therefore, that the assessing authority and the Appellate Tribunal cannot be faulted for taking note of this fact and estimating the turnover of the assessee in the instant case.

8. On a consideration of the rival submissions, we find ourselves unable to sustain the impugned order of the Appellate Tribunal, which set aside the orders of the First Appellate Authority and restored the orders of the assessing authority in these cases. We note that the assessee had clearly demonstrated before the First Appellate Authority the mode of arriving at the Equalized List Price at which the products in question were made available to its own branch offices situated all over the country. The idea of arriving at an Equalized List Price, which admittedly is not the same as the cost of manufacture of the product, is to ensure that the product manufactured by the assessee is available across the country at a uniform



price. If the assessee had adopted the Equalized List Price for the purposes of stock transferring the product to its various branches across the country, we cannot find any fault with the said procedure because there is no embargo under the statute for doing so. That apart, we must acknowledge that it is the manufacturer of the product, who knows best the value of his products, and taxing authorities have to accord due deference to the wisdom of the manufacturer with regard to the pricing of his product. As regards the issue of valuation of the goods at the time of the sale from the manufacturer's outlets to the dealer concerned, we find that here again the manufacturer had already published a scheme of trade discount, which was known to the trade well in advance, and had applied the trade discount to the Equalized List Price while effecting sales to particular dealers. The Department does not have a case that any amount, in excess of what was shown in the sales invoices issued to the various dealers, was collected from the dealer by the assessee manufacturer. Under the said circumstances, and in the absence of any material to suggest that the assessee had suppressed his turnover, we find that the estimation resorted to by the assessing authority was wholly unwarranted. As has been noticed in the decision in **Minar Castings Pvt.Ltd. (M/s.), (Supra)** following the decision of **Classic Marbles (Supra)**, it is trite that there have to be valid reasons for an assessing authority to reject the returns filed by an assessee and to proceed with best judgment assessment. In the absence of any such reasons in the instant cases, we have no hesitation in setting aside the impugned order of the Appellate Tribunal and restoring the order of the First Appellate Authority, which in our view represents the correct exposition of the law in this regard. We, therefore, allow these OT. Revision



Petitions by setting aside the impugned orders of the Appellate Tribunal, and answering the questions of law raised in favour of the petitioner assessee and against the revenue. The other questions of law raised in the various OT. Revision Petitions, being factual in nature, are answered through the findings in this judgment.

Sd/-

**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Sd/-

**SYAM KUMAR V.M.**  
**JUDGE**



APPENDIX OF OT.REV 53/2023

**PETITIONER ANNEXURES**

- Annexure -A** TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2012-13 DT.25.5.2016
- Annexure -B** TRUE COPY OF THE MEMORANDUM OF APPEAL CONCERNING THE ASSESSMENT YEAR 2012-13 NAMELY KVAT APPEAL NO.119 OF 2016
- Annexure -C** THE TRUE COPY OF THE NOTES OF ARGUMENTS FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER (APPEALS) PALAKKAD DT.7.3.2017 WITHOUT ANNEXURES
- Annexure -D** TRUE COPY OF THE COMMON ORDER OF THE APPELLATE AUTHORITY DT.14.3.2017 PASSED IN 4 APPEALS NAMELY KVAT APPEAL NO.169, 119, 147 & 149 OF 2016,
- Annexure -E** THE CERTIFIED COPY OF THE COMMON ORDER OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL IN T.A.(VAT) 458/2-18, 459/2018, 460/2018 AND 461/2018 DT.29.6.2023



APPENDIX OF OT.REV 54/2023

**PETITIONER ANNEXURES**

- Annexure -A** TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2014-15 DT.30.8.2016
- Annexure -B** TRUE COPY OF THE MEMORANDUM OF APPEAL CONCERNING THE ASSESSMENT YEAR 2014-15 NAMELY KVAT APPEAL NO.149 OF 2016
- Annexure -C** THE TRUE COPY OF THE NOTES OF ARGUMENTS FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER (APPEALS) PALAKKAD DT.7.3.2017 WITHOUT ANNEXURES
- Annexure -D** TRUE COPY OF THE COMMON ORDER OF THE APPELLATE AUTHORITY DT.14.3.2017 PASSED IN 4 APPEALS NAMELY KVAT APPEAL NO.169, 119, 147 & 149 OF 2016
- Annexure -E** THE TRUE COPY OF THE CERTIFIED COPY OF THE COMMON ORDER OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL IN T.A.(VAT) 458/2018, 459/2018, 460/2018 AND 461/2018 DT.29.6.2023



APPENDIX OF OT.REV 55/2023

**PETITIONER ANNEXURES**

- Annexure-A** TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2013-14 DT.10.9.2016
- Annexure -B** TRUE COPY OF THE MEMORANDUM OF APPEAL CONCERNING THE ASSESSMENT YEAR 2013-14 NAMELY K VAT APPEAL NO.147 OF 2016 DATED.10.10.2016
- Annexure -C** THE TRUE COPY OF THE NOTES OF ARGUMENTS FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER (APPEALS) PALAKKAD DT.7.3.2017 WITHOUT ANNEXURES
- Annexure -D** TRUE COPY OF THE COMMON ORDER OF THE APPELLATE AUTHORITY DT.14.3.2017 PASSED IN 4 APPEALS NAMELY K VAT APPEAL NO.169, 119, 147 & 149 OF 2016
- Annexure -E** THE TRUE COPY OF THE CERTIFIED COPY OF THE COMMON ORDER OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL IN T.A.(VAT) 458/2018, 459/2018, 460/2018 AND 461/2018 DT.29.6.2023



APPENDIX OF OT.REV 56/2023

**PETITIONER ANNEXURES**

- Annexure -A** TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2009-10 DT.30.9.2016
- Annexure -B** TRUE COPY OF THE MEMORANDUM OF APPEAL CONCERNING THE ASSESSMENT YEAR 2009-10 NAMELY KVAT APPEAL NO.169 OF 2016 DATED 11.11.2016
- Annexure -C** THE TRUE COPY OF THE NOTES OF ARGUMENTS FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER (APPEALS) PALAKKAD DT.7.3.2017 WITHOUT ANNEXURES
- Annexure -D** TRUE COPY OF THE COMMON ORDER OF THE APPELLATE AUTHORITY DT.14.3.2017 PASSED IN 4 APPEALS NAMELY KVAT APPEAL NO.169, 119, 147 & 149 OF 2016
- Annexure -E** THE TRUE COPY OF THE CERTIFIED COPY OF THE COMMON ORDER OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL IN T.A.(VAT) 458/2018, 459/2018, 460/2018 AND 461/2018 DT.29.6.2023