IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

OT.Rev.No. 35 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN TAVAT 809/2010 of KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM DATED 17-10-2011

REVISION PETITIONER(S)/(APPELLANT/ASSESSE):

K.P.VARGHESE,
THRISSUR FASHION JEWELLERY, PANDALAM.

BY ADV. SRI.MOHAMMED RAFIQ

RESPONDENT(S)/(RESPONDENT):

THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
COMMERCIAL TAXES DEPARTMENT, TRIVANDRUM, PIN-695001.

R BY GOVERNMENT PLEADER

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 01-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX IN OTRV.35/12

PETITIONER'S EXHIBITS:

ANNEXURE A: THE TRUE COPY OF THE ASSESSMENT ORDER NO.32030319824 DATED 3.5.2010 FOR the YEAR 2007-08 PASSED BY THE COMMERCIAL TAX OFFICER, ADOOR AGAINST THE PETITIONER.

ANNEXURE B: THE TRUE COPY OF THE ORDER DATED 12.10.10 PASSED BY THE DEPUTY COMMISSIONER (APPEALS) II, KOLLAM IN AVATA NO.272/09.

ANNEXURE C: THE ORDER DATED 17.10.11 PASSED BY THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM IN TA VAT NO.809/10.

ANNEXURE D: TRUE COPY OF THE PROCEEDINGS OF THE INTELLIGENCE OFFICER, SQUAD NO.II, PATHANAMTHITTA DATED 20.10.2009 UNDER SECTION 74 OF THE KERALA VALUE ADDED TAX ACT, 2003.

ANNEXURE E: TRUE COPY OF THE RECEIPT NO.4743674 DATED 9.2.2011 ISSUED BY THE SPECIAL TAHSILDAR REVENUE RECOVERY, KANAYANNUR.

/TRUE COPY/

PS TO JUDGE

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

O.T.Rev.No.35 of 2012

Dated this the 1st day of July, 2015

O R D E R

Antony Dominic, J.

1. This revision is filed by the assessee aggrieved by the order passed by the Tribunal in TA VAT.809/10.

2. We heard learned counsel for the assessee and the learned Government Pleader appearing for the respondent.

3. The assessee was a dealer in gold. There was an inspection in their shop on 10.12.2007. On the basis of the finding of suppression of turnover, penalty proceedings were initiated and penalty was also levied on the assessee. In an appeal filed by the assessee before the first appellate authority, the matter was remanded to the Intelligence Officer. When the matter was pending before the Intelligence Officer, the assessee applied for compounding the offence and accordingly, Annexure D order was passed by the Intelligence Officer, allowing compounding of the offence under section 74 of the KVAT Act on

payment of ₹4 lakhs. In that order, the tax liability of the assessee was quantified at ₹12,28,000/- which also was paid. Subsequently, assessment for the year 2007-08 was reopened and Annexure A order was passed under section 25. In this order, suppressed turn over was quantified at Rs.3,04,03,671.70. To this, an equal amount for probable omission and suppression was also added. On that basis, tax and interest was levied. This was confirmed by the first appellate authority.

4.In the further appeal that was filed before the Tribunal, Annexure C order was passed, whereby, the Tribunal rejected the contention of the assessee that the assessment could not have been reopened and completed under section 25. For this purpose, the Tribunal relied on the judgment of the Apex Court in <u>Commissioner of Sales Tax, Madhya Pradesh</u> v. <u>H.M.Abdulali</u> [32 STC 77]. The special rebate claimed by the assessee under section 6(2) was allowed. However, in so far as the contention of the assessee regarding the addition of equal amount that was made, after stating that the further addition of an amount equal to the suppressed turnover is excessive, the Tribunal reduced the same to 80%.

5.In this revision, the first contention raised by the learned counsel for the petitioner is that the assessment completed under section 25 is untenable in view of section 22 (10) of the KVAT Act. He, therefore, contends that the Tribunal erred in applying the principles laid down by the Apex Court in H.M.Abdulali (supra).

6.In order to appreciate this contention, it is necessary to refer to section 22 (10), which, along with its proviso, reads thus:

> **"22. Assessment in case of non-filing of return and filing of defective return** -
>
> x x x x x
>
> (10) Where the proceedings referred to in the above sub-section are finalised under section 74 on payment of tax due along with the compounding fee, the dealer may thereafter file a revised return incorporating such turnover covered in such proceedings within a period of

> three months from the finalisation of such proceedings and on the receipt of such return by the assessing authority, the assessment for the return period or periods shall, subject to the provisions of sections 24 and 25, be deemed to have been completed:
>
> Provided that where a pattern of suppression is detected the assessing authority shall proceed with best judgment assessment in accordance with the provisions of sections 24 and 25, as the case may be."

7. Reading of this provision shows that the first requirement of the section is that proceedings under section 74 should have been finalised on payment of tax due along with the compounding fee. This requirement is satisfied in this case. The second requirement is that thereafter, the dealer should have filed a revised return incorporating the turnover in respect of which proceedings under section 74 is finalised. The further requirement is that such revised return should be filed within three months from the finalisation of the proceedings under section 74. Admittedly, in this case, proceedings under section 74 were finalised on 20.10.2009 and the

dealer did not file any revised return. In such a situation, the dealer cannot take refuge under section 22 (10) to resist a proceedings under section 25. If that be so, the contention raised by the dealer, in the facts of this case, is untenable. However, on the issue as to whether the Tribunal was correct in applying the principles in H.M.Abdulali (supra), that is a matter which is to be gone into in a case to which section 22 (10) has application and not in this case.

8.The surviving grievance of the dealer is that the addition of 80% is excessive. Admittedly, the suppressed turnover was quantified on the basis of the registers and the slips recovered from the premises of the assessee. The Tribunal itself has held that the addition of equal amount is excessive. However, the Tribunal has restricted the relief of reduction to only 20%. In our view, considering the factual situation and also the case of the assess that he has since stopped the business, addition of an amount of 50% of the suppressed turnover would be reasonable. Therefore, addition of equal amount in the order passed by the Assessing Authority and modified by the Tribunal is further modified restricting the addition to 50% of the suppression estimated.

The revision is disposed of directing the Assessing Authority to modify the assessment order in terms of the above direction.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

kkb.