IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

OT.Rev.No. 98 of 2012 ()
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AGAINST THE ORDER IN TA(VAT) 263/2008 of KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM DATED 30-12-2011

REVISION PETITIONER/ASSESSEE:
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TENNY DEVASSY
PROPRIETOR, M/S.TRIPUNITHURA CEMENT CENTRE
MARKET JUNCTION, TRIPUNITHURA, KOCHI 682301.

BY ADV. SRI.DALE P.KURIEN

RESPONDENT/REVENUE:
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STATE OF KERALA
REPRESENTED TO CHIEF SECRETARY TO GOVERNMENT
THIRUVANANTHAPURAM - 695 001.

BY SENIOR GOVERNMENT PLEADER SRI. LIJU STEPHEN

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 13-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A : TRUE COPY OF THE ASSESSMENT ORDER DATED 28.10.2006.

ANNEXURE B : TRUE COPY OF THE APPELLATE ORDER OF THE DEPUTY COMMISSIONER (APPEALS) DATED 07.09.2007.

ANNEXURE C : TRUE COPY OF THE RECTIFICATION ORDER PASSED BY THE DEPUTY COMMISSIONER (APPEALS)

ANNEXURE D : TRUE COPY OF THE APPEAL MEMORANDUM FILED BEFORE THE VALUE ADDED TAX APPELLATE TRIBUNAL DATED 17.07.2008.

ANNEXURE D1 : TRUE COPY OF THE HEARING NOTES FILED BEFORE THE VALUE ADDED TAX APPELLATE TRIBUNAL DATED 17.07.2008 (WITHOUT ANNEXURES TO AVOID REPITION)

ANNEXURE E : TRUE COPY OF THE CIRCULAR NO.41/2007 DATED 18.09.2007.

ANNEXURE F : TRUE COPY OF THE CERTIFICATES ISSUED BY M/S.MALABAR CEMENTS LTD. DATED 25.1.2007.

ANNEXURE G : TRUE COPY OF THE FIRST APPELLATE ORDER PASSED BY THE DEPUTY COMMISSIONER (APPEALS) DATED 25.11.2010 IN THE CASE OF M.A. DEVASIA.

ANNEXURE H : TRUE COPY OF THE FIRST APPELATE ORDER PASSED BY THE DEPUTY COMMISSIONER (APPEALS) DATED 14.01.2011 IN THE CASE OF SRI.C.M.SAJEE.

ANNEXURE I : TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE ASST. COMMISSIONER (AUDIT ASST.) IN THE CASE OF PERINGHAT AGENCIES, ALUVA DATED 31.3.2008.

ANNEXURE J : TRUE COPY OF THE APPELLATE ORDER OF THE TRIBUNAL DATED 30.12.2011.

ANNEXURE K : TRUE COPY OF THE FIRST APPELLATE ORDER DATED 12.9.2012 PASSED BY THE DEPUTY COMMISSIONER (APPEALS), COMMERICAL TAXES, ERNAKULAM.

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ANNEXURE L : TRUE COPY OF THE DECISION CITED CEMENT HOUSE V.STATE OF KERALA REPORTED IN (2010) 18 KTR 329 9KER0

ANNEXURE M : TRUE COPY OF THE ASSESSMENT ORDER DATED 23.9.2011 IN THE CASE OF M/S.CEMENT HOUSE FOR THE RETURN PERIOD FROM APRIL 2009 TO MARCH 2010.

ANNEXURE N : TRUE COPY OF THE DECISION CITED COROMANDEL FERTILIZERS VS. CTO, HYDERABAD REPORTED IN 85 STC 552(AP)

ANNEXURE O : TRUE COPY OF THE DECISION CITED ASST.COMMISSIONER OF SALES TAX (ASSESSMENT), SPECIAL CIRCLE II, ERNAKULAM VS. KRISHAK BHARATHI CO-OPERATIVE LTD. REPORTED IN 99 STC 17 (KER)

ANNEXURE P : TRUE COPY OF THE DECISION CITED MADRAS FERTILIZERS LTD. VS. ASST. COMMISSIONER (ASSESSMENT), SPECIAL CIRCLE II, ERNAKULAM & ANOTHER REPORTED IN 95 STC 134 (KER)

ANNEXURE Q : TRUE COPY OF THE DECISION CITED STATE OF ANDHRA PRADESH VS. T.V. SUNDARAM IYENGAR & SONS LTD., REPORTED IN 65 STC 41(AP)

ANNEXURE R : TRUE COPY OF THE DECISION CITED DEPUTY COMMISSIONER OF SALES TAX (LAW), ERNAKULAM VS. MOTOR INDUSTRIES COMPANY REPORTED IN 53 STC 48(SC)

ANNEXURE S : TRUE COPY OF THE REPLY LETTER UNDER THE RIGHT TO INFORMATION ACT, 2005 DATED 20.03.2013 RECEIVED BY THE REVISION PETITIONER.

ANNEXURE T : TRUE COPY OF THE TABULAR STATEMENT SHOWING TAX EFFECT INCLUDING THE TRADE DISCOUNT.

ANNEXURE U : TRUE COPY OF THE TABULAR STATEMENT SHOWING TAX EFFECT EXCLUDING THE TRADE DISCOUNT.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**ANTONY DOMINIC**
**&**
**SHAJI P. CHALY, JJ.**
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**O.T.Rev. No.98 of 2012**
**---------------------------------------------**
**Dated this the 13th day of July, 2015**

**ORDER**

**Antony Dominic,J.**

This revision is filed by the assessee, who is aggrieved by the order passed by the Tribunal in TA(VAT) No.263/2008. By this order, the Tribunal has confirmed the order of assessment passed under Section 25 of the KVAT Act, whereby the assessment was completed adding discount received by the assessee also to be his turnover.

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

3. The only question that arises for consideration is whether for the assessment year in question viz., 2005-2006, the discount received by the assessee were also to be included to the turnover of the assessee, for the purpose of levying tax under the KVAT Act. Contention raised by the counsel for the petitioner is that in view of Annexure - E, Circular No.41/2007 dated 18.09.2007, judgment of this Court in **Madras Fertilisers**

**Limited v. Asst. Commissioner (Assessment), Special Circle -II, Agrl. Income Tax and Sales Tax Dept., Ernakulam and Another** [95 STC 134], the Andhra Pradesh High Court in **The State of Andhra Pradesh v. T.V. Sundaram Iyengar & Sons Ltd.** [65 STC 41] and the Apex Court Judgment in **Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Motor Industries Co.** [53 STC 48], the discount received by the assessee is not liable to be included in the turnover of the assessee.

4. On the other hand, according to the learned Government Pleader, in view of the provisions contained in Section 2(lii) read with its explanations, the assessing authority has rightly included the discount received by the assessee, also to the turnover.

5. The above dispute, has to be resolved in the light of the provisions of the KVAT Act. Section 2(lii) defines turnover. As per this provision, the turnover means the aggregate amount for which goods are either bought or sold, supplied or distributed by a dealer. Explanation VII to this section reads thus:

> "Explanation VII:-Where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and

> subsequently receives any amount from any person towards reimbursement for the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods."

Reading of the Explanation shows that where a dealer sells any goods purchased by him at a price lower than at which it was purchased and subsequently receives any amount towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.

6. In so far as this case is concerned, admittedly the assessee has sold cement purchased from Malabar Cements Ltd. at a price lower than the price at which it was purchased by him. Subsequently, the assessee has received further amounts from Malabar Cements Ltd. towards reimbursement of the balance price. Such a payment though called reimbursement of the discount, is a payment in reimbursement of the balance of the price, attracting Explanation VII to Section 2(lii). If that be so, the amount so received by the assessee was liable to be added to his turnover.

7. This position is also clear from Explanation III to Clause 2 of Section 2(lii) which reads thus:

> "(ii) Any discount on the price allowed in respect of any sale where such discount is shown separately in the tax invoice and the buyer pays only the amount reduced by such discount; or any amount refunded in respect of goods returned by customers shall not be included in the turnover."

This provision clarifies that what is to be excluded from the turnover is only a discount on the price allowed by a dealer, where such discount is shown separately in the tax invoice and the buyer pays only the amount reduced by such discount.

8. The above provisions of the Act show that any reimbursement of the price received by a dealer, is liable to be included in his turnover whereas the discount allowed to the customer, and shown separately in the tax invoice, is liable to be excluded. If this be the statutory provision, the assessing authority cannot be faulted for adding the payment received by the assessee to his taxable turnover.

9. All the judgments relied on by the assessee, were rendered in the context of the KGST Act and the corresponding Sales Tax Law prevailing in the State of Andhra Pradesh and not in the context of KVAT Act. In these judgments, the courts did

not have any occasion to interpret a provision such as Explanation VII to Section 2(lii) of the KVAT Act. We, therefore, do not see any relevance to these judgments.

10. In so far as Circular No.41/2007 is concerned, a copy of the circular has been produced as Annexure - E. This circular only deals with input tax claim and has no relevance in the context of a case like that of the assessee. Therefore, we cannot accept the contention of the counsel for the petitioner that by this circular, the Government have nullified the effect of Explanation VII (supra).

11. For these reasons, we do not find any reason to differ from the view taken by the Tribunal confirming the orders of the assessing authority and the first appellate authority.

Revision fails and accordingly it is dismissed.

Sd/-
**ANTONY DOMINIC**
**JUDGE**

Sd/-
**SHAJI P. CHALY**
**JUDGE**

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