IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

ST.Rev..No. 165 of 2007 ( )
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AGAINST THE ORDER IN TA NO.125/2006 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOTTAYAM DATED 28-06-2006.

PETITIONER/RESPONDENT/REVENUE:
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STATE OF KERALA, REPRESENTED BY
JOINT COMMISSIONER (LAW) IN-CHARGE,
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. LIJU V. STEPHEN

RESPONDENT/APPELLANT/ASSESSEE:
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SRI.GEORGE VARGHESE,
M/S. GENERAL RUBBERS,
KOTTAYAM.

BY ADV. SRI.A.KUMAR

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 09-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &**
**K. HARILAL, JJ.**

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**S.T. Revision No. 165 of 2007**

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**Dated this the 9th day of January, 2015**

**ORDER**

**Thottathil B. Radhakrishnan, J.**

This revision under Section 41 of the K.G.S.T. Act, 1963 is filed by the Revenue. We heard the learned senior Government Pleader, on behalf of the Department, and the learned counsel appearing for the respondent/assessee.

2. The respondent filed T.A. Nos.125 and 126 of 2006 before the Sales Tax Appellate Tribunal. They were appeals relating to the assessments under the K.G.S.T. Act and the C.S.T. Act for the year 2001-02. The Tribunal considered the crucial issue as to whether the assessee is the manufacturer and whether the

holder of a trade name "MIDAS" acted as an agent. It concluded in paragraph-5 of the impugned order as follows:

> "5. x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x Here in this case the lower authorities have no case that the agent sold the goods at one rate and the sale proceeds were passed on to the appellant at another rate, or that the agent has not accounted to the appellant for the entire collections made by him in the sales of the goods in question. Thus none of the conditions prescribed for treating the transfers by the appellant to his agent as sales exist in these disputed transactions. So the lower authorities erred in treating the transfer of the goods by the appellant to his agent for sales as local sales to the agent. The appellant has purchased the right

to use the brand name of the agent and branded his goods with that brand name, then entrusted them with the agent for selling them and the agent sold all the goods interstate and transferred the sale proceeds to the appellant, none of these facts are in dispute. The only reason for treating the transfers to the agent as sales is that the agent is the holder of the brand name and the sales within the State by the brand name holder shall be the first sales. Since none of the goods involved are sold within the State, the question of first sales in the State doesn't arise. Thus in view of the facts and circumstances of the case as proved by the documents we are of opinion that the assessment treating the transfers of the goods to the agent for sales as local

> sales of the appellant to the agent is unsustainable and so we hold accordingly deciding the issue in favour fo the appellant.”

3. For one thing, the aforesaid is nothing; but a pure finding of fact based on assimilation of evidence and documents available on record. That position notwithstanding, it is not shown that the Tribunal had failed to decide any question of law or has erroneously decided any question of law, arising on the facts found by it. For this reason, the revision under Sec.41 of the KGST Act has to fail on jurisdictional count.

4. Be that as it may, we note that the learned senior Government Pleader has very persuasively attempted to point out that the nature of transaction cannot be passed off as a stock transfer and could have been taken only as one which would fall within the trappings of the provisions enabling independent assessment as if the respondent/assessee is the first

seller in this State. But the fact of the matter remains that the aforequoted findings in paragraph-5 of the impugned order of the Tribunal have been taken over and utilised to decide the CST Appeal as well. The resultant decision has led to an order of remit. In so far as that CST Appeal (T.A. No.126 of 2006) is concerned, the Revenue had filed S.T. Rev. No.215 of 2007 with an application seeking condonation of delay. By order dated 23/7/2007, the Division Bench had dismissed the application for condonation of delay and as a consequence, had rejected the revision as against the order in so far as it is against T.A.No.126 of 2006. Therefore, the findings of fact which have led to the finality of the order in the CST Appeal which is T.A.No.126 of 2006 continue to stand, and we will be contradicting that conclusion which has attained finality, if we were to embark on an independent adjudication in this revision which is in relation to the KGST Appeal, namely T.A. No.125 of 2006. On this ground also, this revision fails.

In the result, this revision is dismissed. No costs.

Sd/-

(**THOTTATHIL B. RADHAKRISHNAN, JUDGE)**

**Sd/-**

**(K. HARILAL, JUDGE)**

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P.S. to Judge