IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

OT.Rev.No. 20 of 2011

AGAINST THE ORDER IN TA 108/2010 of KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM

REVISION PETITIONER/PETITIONER/APPELLANT IN TA:

K.K.NARAYANAN, PROPRIETOR,
NILESHWAR GAS AGENCY, NILESHWAR.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH
SRI.KURYAN THOMAS

RESPONDENT/RESPONDENT IN TA:

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

BY SENIOR GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 13-10-2015, ALONG WITH OTRV. 21/2011 & OTRV. 22/2011, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

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O.T.Revision Nos.20, 21 & 22 of 2011

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Dated this the 13th day of October, 2015

ORDER

Thottathil B.Radhakrishnan, J.

1. Heard the learned counsel appearing for the revision petitioners and the learned Senior Counsel appearing for the Department of Commercial Taxes.

2. These O.T.Revisions under Section 63(1) of the Kerala Value Added Tax Act, 2003 are filed by retail dealers of LPG (Liquid Petroleum Gas) for domestic use. With effect from 18.04.2006, the list of declared goods in terms of Section 14 of the Central Sales Tax Act was amended incorporating LPG for domestic use as a commodity in that list and the levy would run at 4% from that date. However, consequential amendment was brought into KVAT Act, only with effect from 01.07.2000. Going by the provisions of the KVAT Act, the

rate at which levy could have been effected was at the rate of 12.5%. When the amendment to the list under Section 14 of the CST Act operated with effect from 18.04.2006, Section 15 stood requiring that there shall be no levy by any State in excess of the rate specified in terms of the provisions of that Act. That being so, there could not have been any levy at the rate of 12.5% on and after 18.04.2006. The dispute in these revisions relates to the period from 18.04.2006 till 01.07.2006, the date on which the consequential amendment was brought into the KVAT Act. In other words, the plea is that the rate at 12.5% would have been levied by the State on LPG for domestic use only till 17.04.2006 and not thereafter. This plea is only to be accepted, since the provisions of Section 15 of the CST Act are by themselves sufficient to hold so. Be that as it may, we also note that this issue stands covered by a Bench decision of this Court in **K.M.Jose v. Asst.Commissioner (Assessment), VAT (Ker)** [(2010) 30 VST 68 (Ker)].

For the aforesaid reasons, these O.T.Revisions are ordered directing that the assessments will be re-worked without making any levy beyond 4% on and after 18.04.2006. The orders impugned will stand modified accordingly.

sd/-
Thottathil B.Radhakrishnan, Judge

sd/-
Anu Sivaraman, Judge

sj

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P.A.TO JUDGE