IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

OT.Rev.No. 39 of 2013 ()

AGAINST THE ORDER IN TA (VAT) No.616/2012 of KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM DATED 21-12-2012

PETITIONER/APPELLANT:

SHOE CLUB
QUEEN'S BANK, VATAKARA

BY ADVS.SRI.K.P.ABDUL AZEES
SMT.C.AMRITA
SMT.T.ARCHANA
SMT.SHRUTHI MANOHAR

RESPONDENT/RESPONDENT:

STATE OF KERALA
REP. BY DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES
ERNAKULAM - 682 030.

BY SENIOR GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 31-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

AL/-

THOTTATHIL B. RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

- -

O.T.Rev. No. 39 of 2013

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Dated this the 31st day of August 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

Heard the learned counsel for the revision petitioner and the learned counsel for the Revenue on the O.T Revision, filed under Section 63 of the Kerala Value Added Tax Act, 2003, for short 'K.V.A.T.Act'. At hearing, the only issue raised is that notwithstanding the findings rendered by the authorities below, the revision petitioner is entitled to the benefit of the amendment made by the Kerala Finance Act, 2014, to the extent it relates to input tax credit. It is pointed out that Section 25 C has been introduced in the K.V.A.T. Act through the Kerala Finance Act, 2014, only with effect from 1.4.2005. The relevant assessment year in so far as this revision is concerned is 2008-09. The retrospective amendment, as made by the introduction of Section 25 C, is a special provision regarding assessment of dealers paying presumptive tax. The said provision provides that notwithstanding anything contained in sub-section (4) of Section 11 or sub-section (2) of Section 12, if any assessment or other proceeding is initiated by the assessing authority denying the eligibility of a dealer to pay presumptive tax for the violation of conditions enumerated in sub-section (5) of Section 6, such dealer shall be granted input tax credit or special rebate, as the case may be. That being so, even if the revision petitioner had violated the conditions enumerated in sub-section (5) of Section 6; that is to say, the import of goods from another State; he will continue to enjoy the benefit of input tax credit. Hence, the orders impugned have to be modified and the assessing authority is directed hereby to modify the assessment order by giving input tax credit on the basis of the aforenoted amendment; however, after verifying the invoices produced by the assessee. Such is the order which ought to have been, and, was required to be passed in this case under Section 63 of the Act. Hence, this revision is ordered directing compliance of the aforesaid in letter and spirit.

Sd/-

Thottathil B. Radhakrishnan, Judge

Sd/-

Anu Sivaraman, Judge

al/- 31/8

True copy

P.S to Judge