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

O.T.Rev.No. 56 of 2013 ()

AGAINST THE ORDER IN TA(VAT)NO. 480/2012 of KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM DATED 29-12-2012.

REVISION PETITIONER(S)/RESPONDENT/REVENUE:

STATE OF KERALA,
REPRESENTED BY THE DEPUTY COMMISSIONER OF LAW,
COMMERCIAL TAXES, ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER, SRI.S.SUDHESH KUMAR

RESPONDENT(S)/APPELLANT/ASSESSEE:

A.M. MUHAMMED ALI,
NIRMAN CONSTRUCTION, MANJERI PIN - 676 121.

BY ADVS. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

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

P.T.O.

O.T.REV.NO.56 OF 2013

APPENDIX

REVISION PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ASSESSMENT ORDER DATED 21.10.2010 PASSED BY THE COMMERCIAL TAX OFFICER (WC-I), COMMERCIAL TAXES, MALAPPURAM.

ANNEXURE B: TRUE COPY OF THE FIRST APPELLATE ORDER DATED 15.12.2011 PASSED BY THE ASSISTANT COMMISSIONER (APPEALS), OFFICE OF THE DEPUTY COMMISSIONER'S (APPEALS), COMMERCIAL TAXES, PALAKKAD.

ANNEXURE C: TRUE COPY OF THE ORDER DATED 29.12.2012 PASSED BY THE KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM IN TA (VAT) NO.480/2012.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

O.T.Rev. No.56 of 2013
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Dated this the 1st day of July, 2015

ORDER

Antony Dominic, J.

This revision is filed by the Revenue, challenging the order passed by the Kerala VAT Appellate Tribunal, Ernakulam, allowing T.A.(VAT) No.480/2012 filed by the Respondent - assessee. The Respondent is a P.W.D. Contractor and the assessment year relevant is 2007-2008. On 05.04.2009, Respondent, a dealer registered under the K.V.A.T Act, 2003 applied for payment of tax at compounded rates as provided under Sec.8 of the Act and that was allowed by order dated 02.06.2009, with effect from 01.04.2005. Subsequently, assessment for the year 2007-2008 was reopened and was completed under Sec.25, on the basis that the assessee had valid registration under the C.S.T Act for the year in question and therefore was not eligible for benefit of payment of tax under Sec.8. This order was confirmed by the Appellate

Authority. However, the Tribunal set aside the order and this is the background in which this revision is filed.

2. According to the learned Senior Government Pleader, Sec.8 specifically makes ineligible dealers having C.S.T Registration and therefore the assessee was not eligible for payment of tax at compounded rates. The learned Senior Counsel appearing for the Respondent contended that at the time when order dated 02.06.2009 was passed allowing compounding with effect from 01.04.2005, the assessee had already got his registration under the C.S.T Act cancelled and that therefore the assessment on the basis that he was not eligible for payment of tax under Sec.8 is untenable.

3. We have considered the submissions made.

4. Despite the rival contentions that are urged on facts, we notice that payment of tax at compounded rate was allowed by order dated 02.06.2009, and that order was not cancelled at any stage of the proceedings, in terms of the provisions contained in Sec.8(f)(ii) of the K.V.A.T Act. Applying the principle that even a void order would remain in force until it is cancelled in appropriate proceedings, we have to necessarily hold that the order allowing compounding still

remained in force. If that be so, the assessment of the Respondent could not have been reopened and completed under Sec.25 of the Act. Therefore, the conclusion of the Tribunal, setting aside the order of the Assessing Officer and confirmed by the Appellate Authority cannot be interfered with.

Revision fails and accordingly, it is dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-