IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

OT.Rev.No. 133 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN TAVAT 301/2013 of VALUE ADDED TAX APPELLATE TRIBUNAL,ADDL.BENCH,PKD DATED

REVISION PETITIONER/APPELLANT:

P.JAYACHANDRAN,
SPAN CONSTRUCTION, K.M.COMPLEX, CHERPLASSERY ROAD,
OTTAPALAM.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT/RESPONDENT.:

THE STATE OF KERALA

R BY SRI.LIJU V.STEPHEN, GOVERNMENT PLEADER

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 29-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

DG

APPENDIX

PETITIOENR'S EXHIBITS:

ANNEXURE - A:	**COPY OF ASSESSMENT ORDER PASSED BY COMMERCIAL TAX OFFICER (WC), PLAKKAD, FOR THE YEAR 2008-09 DATED 23.03.2010.**
ANNEXURE - B:	**COPY OF THE 1ST APPELLATE ORDER PASSED BY ASSISTANT COMMISSIONER (APPEALS), O / OF THE DEPUTY COMMISSIONER (APPEALS), DEPARTMENT OF COMMERCIAL TAXES, PALAKKAD, FOR THE YEAR 2008-09 DATED 17.04.2012.**
ANNEXURE - C:	**COPY OF THE COMMON TRIBUNAL ORDER IN T.A.(VAT) NOS. 301/2013 TO 304/2013 DATED 26.06.2013.**
ANNEXURE - D:	**COPY OF THE COMMON ARGUMENT NOTE FILED BY THE PETITIONER DATED 19.06.2013.**
ANNEXURE - E:	**COPY OF THE INTERIM ORDER IN O.T.REV.NO.57/2013 DATED 18.06.2013.**

RESPONDENT'S EXHIBITS - NIL

//TRUE COPY//

P.A TO JUDGE

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

O.T.R.No.133 of 2013

Dated this the 29th day of January, 2015

ORDER

Thottathil B.Radhakrishnan, J.

1. We have heard the learned counsel for the revision petitioner and the learned Special Government Pleader. We have examined the materials as reflected from the impugned orders in the light of the contents of the common judgment in O.T.R.No.57 of 2013 and connections, decided by the Division Bench on 31.3.2014. That judgment had decided all revisions of the revision petitioner before us except the present matter. This stood segregated from the bunch in view of the fact that an additional question also arose for decision.

2. Hearing the learned counsel for the parties, the following questions of law are formulated for decision in this revision:

   1. Whether on the facts and circumstances of the case the Appellate Tribunal was correct in law in confirming the demand of tax on the

amount received by the petitioner for doing labour work, particularly considering the fact that the said work is not taxable under the charging section of Kerala Value Added Tax Act and as per Rule 9(4) of the Kerala Value Added Tax Rule the said amount will not come under the purview of turnover?

2. Whether on the facts and circumstances of the case the Appellate Tribunal has erred in holding that petitioner is liable to pay tax prescribed under Section 8(a)(ii) of the Kerala Value Added Tax Act?

3. As far as question No.1 is concerned, the legal issue stands concluded through the afore-noted judgment in O.T.R.No.57 of 2013 and connections. As regards question No.2, it needs to be noted that the Tribunal did not address on the issue as to whether the petitioner is eligible to claim that he is liable to pay tax only at compounded rate based on a decision as to whether the compounding application could be treated under clause (i) or (ii) of Section 8(a) of the Kerala Value Added Tax Act. The pointed issue in this regard is that when the provisions stood amended with effect from 1.4.2008, the

substance of the compounding application should be considered to determine whether it would fall under the compounded rate of tax in terms of Section 8(a)(i) or 8(a)(ii) of the Act as it stood amended with effect from 1.4.2008. This question has to be decided by the Tribunal. Since that issue is left undecided, the matter needs to be further considered in that regard as well.

For the aforesaid reasons, the impugned order is set aside and T.A.VAT.No.301 of 2013 of the KVAT Appellate Tribunal, Palakkad is remitted to the said Tribunal for reconsideration. The Tribunal will also examine whether it would be necessary to remit the matter to the assessing authority if further examination of records becomes necessary, in relation to the labour contract issue.

Sd/-

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-

(K.HARILAL, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG