IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

OT.Rev.No. 13 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN TAVAT 1272/2011 of KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM DATED 28-08-2014

REVISION PETITIONER(S)/APPELLANT/RESPONDENT/REVENUE:

STATE OF KERALA,

BY SRI.LIJU V. STEPHEN, GOVERNMENT PLEADER

RESPONDENT/RESPONDENT/APPELLANT/ASSESSEE:

B.MOHANKUMAR,
M/S.MKR X-RAYSW PRODUCTS, PAVITHRAM, 7TH CROSS ROAD,
MAVELI NAGAR, COCHIN, PIN-682 001.

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 06-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

DG

OT.Rev.No. 13 of 2015 ()

APPENDIX

PETITITIONER'S EXHIBITS:

ANNEXURE A:- TRUE COPY OF THE ASSESSMENT ORDER DATED 26.03.2011 PASSED BY THE COMMERCIAL TAX OFFICER, CIRCLE - I, KALAMASSERY.

ANNEXURE B:- TRUE COPY OF THE ORDER DATED 20.07.2011 IN KVATA NO.1529/11 ON THE FILE OF THE DEPUTY COMMISSIONER (APPEAL) COMMERCIAL TAXES, ERNAKULAM.

ANNEXURE C:- TRUE COPY OF THE ORDER DATED 28.08.2014 IN TA (VAT) NO.1272/11 ON THE FILE OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM.

RESPONDENT'S EXHIBITS - NIL

//TRUE COPY//

P.A TO JUDGE

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

O.T.R.(VAT).No.13 of 2015

Dated this the 6th day of February, 2015

ORDER

Thottathil B.Radhakrishnan, J.

1. We have heard the learned Senior Government Pleader.

2. This revision is filed impeaching the refusal of the Appellate Tribunal under the Kerala Value Added Tax Act to interfere with the decision of the Deputy Commissioner (Appeals), which went in favour of the assessee.

3. The pointed consideration by the Deputy Commissioner (Appeals) essentially shows that the disputed questions were considered by that Appellate Authority with reference to the materials. The findings recorded in that regard are as follows:

> "I have considered the contentions raised by the appellant. The appellant is not an importer nor the Assessing Authority has offered any valid grounds to state that the appellant is a regular importer nor the appellant brought the purchases for sale.

Section 2(xxii) of KVAT Act specifies who is an importer. “Importer means any person who obtains or brings any taxable goods from any place outside the state or country whether as a result of purchase or otherwise for the purpose of business”. From the above it is clear that the import must be for business purpose. In this case it can be seen that the Assessing Authority has no case that the appellant is a regular importer nor has adduced valid grounds to state that the purpose was for business. Section 6(5) mainly states that the PIN dealer shall not be an importer. The status of a presumptive dealer shall not be disallowed for the sole reason that an isolated interstate purchase happened to be in his name and that too for personal purpose. Section 2(xxii) of KVAT categorically said expressly provides that effecting interstate purchases not for the purpose of business never qualify as an importer. From the narration above it is crystal clear that the appellant is not an importer as stipulated in Section 6(5) of the KVAT Act. The circumstances the order issued for disallowing the status is set aside. The Assessing Authority is directed to restore the status of the

> appellant as presumptive dealer. The addition made in the assessment completed is not interfered with."

4. In so far as other issues raised are concerned, the Deputy Commissioner (Appeals) left open those issues following the modification. The Tribunal did not find its way to interfere because it was of the firm view that the State had confused between X-ray table and X-ray cable. We do not see that any question of law has been left undecided by the Tribunal or that any question of law which arose for decision on the facts of the case has been erroneously decided. This revision cannot, therefore, be entertained.

In the result, this revision is dismissed in limine.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(K.HARILAL, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG