IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

OT.Rev.No. 18 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN TA(VAT) 165/2013 of KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ADDL.BENCH, PALAKKAD DATED 11-08-2014

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

STATE OF KERALA

BY ADV.LIJU V. STEPHEN, SR. GOVERNMENT PLEADER

RESPONDENT(S)/APPELLANT/APPELLANT/ASSESSEE:

M/S.KANNANKANDY FRIDGE CENTRE,
THAZHEPADAM, TIRUR, PIN-676101.

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 18-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OTREV.18/15

**APPENDIX**

**PETITIONER'S EXHIBITS**

**ANNEXURE-A : COPY OF THE ASSESSMENT ORDER ISSUED BY THE ASST.COMMISSIONER DATED 29.11.2009.**

**ANNEXURE-B : COPY OF THE ORDER DATED 16.07.2010 ISSUED BY THE DEPUTY COMMISSIONER (APPEALS).**

**ANNEXURE-C : COPY OF ORDER OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, PALAKKAD DATED 11.08.2014.**

**//TRUE COPY//**

**PA TO JUDGE.**

jg

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

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O.T.Rev.No.18 of 2015
and
C.M.Appl.No.81 of 2015 in O.T.Rev.No.18 of 2015

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Dated this the 18th day of February, 2015.

O R D E R

Thottathil B.Radhakrishnan, J.

1. This Other Tax Revision comes up with an application seeking condonation of delay of 39 days in its institution.

2. We have heard the learned senior government pleader in support of this revision challenging an order of remit made by the Appellate Tribunal under the Kerala Value Added Tax Act, 2003, "Act", for short.

3. Perusing the order of the Tribunal, we see that the order of remit has been made to provide appropriate opportunity to the dealer to produce correct declarations. The Tribunal was of the view that the order of the assessing authority declining input tax credit for the incentives requires re-consideration. To hold so, the

Tribunal, well within its jurisdiction, took the view that it would be premature to hold that the case falls within the mischief of Explanation VII to Section 2(1ii) of the Act inasmuch as there is no definite or specific finding that the goods were sold at lower price than the price at which those were purchased and further that incentives were given to cover the deficit. The decision handed down by the Tribunal is not one that has been rendered by erroneously deciding any question of law or by failing to decide any question of law arising for decision in the case in hand. We are, therefore, of the view that the order of remit is not adverse to the interest of the Revenue, and this matter does not merit admission.

For the aforesaid reasons, the application seeking condonation of delay and the revision are dismissed in limine.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

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