IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

OT.Rev.No. 23 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN TAVAT 154/2009 of KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM DATED 24-08-2011

REVISION PETITIONER(S)/RESPONDENT/ASSESSEE:

K.C.MAZOOD
KANDARATH VEEDU, PEZHAKKAPILLY
MUVATTUPUZHA.
(PARTNER OF THE DEFUNCT FIRM "SAFA FASHION CENTRE"
M.C.ROAD, PEZHAKKAPPILLY, MUVATTUPUZHA)

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR

RESPONDENT(S)/APPELLANT/REVENUE:

STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695001.

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

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 16-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OTREV.23/15

## APPENDIX

**PETITIONER'S EXHIBITS**

**ANNEXURE-A : COPIES OF THE MONTHLY RETURNS AND ANNUAL RETURN FOR 2005-06.**

**ANNEXURE-B : COPIES OF THE STATEMENTS OF SALES AND PURCHASES FOR 2005-06 FILED ALONG WITH THE ANNUAL RETURN.**

**ANNEXURE-C : COPY OF LEASE AGREEMENT DATED 01.04.2011 FOR THE PERIOD FROM 01.04.2011 TO 31.03.2012.**

**ANNEXURE-D : COPY OF ASSESSMENT ORDER FOR THE YEAR 2005-06 DATED 27.11.2006 OF the ASSISTANT COMMISSIONER (AUDIT), MATTANCHERRY AT ALUVA.**

**ANNEXURE-E : COPY OF APPELLATE ORDER DATED 20.02.2009 IN KVATA 417/2007 ISSUED BY THE DEPUTY COMMISSIONER (APPEALS), ERNAKULAM.**

**ANNEXURE-F : COPY OF THE ORDER DATED 24.08.2011 IN TA VAT 154/2009 OF THE HONOURABLE KVAT TRIBUNAL, ERNAKULAM.**

**ANNEXURE-G : COPIES OF THE MEDICAL DISCHARGE CERTIFICATE DATED 04.12.2013 AND THE MEDICDAL PRESCRIPTION ISSUED BY THE HOSPITAL AUTHORITIES.**

**ANNEXURE-H : COPY OF THE SALE NOTICE IN FORM 16 BEARING NO.B4-2784/2012 DATED 15.12.2014 ISSUED BY THE TAHSILDAR, MUVATTUPUZHA.**

**//TRUE COPY//**

**PA TO JUDGE.**

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THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

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O.T.Rev.No.23 of 2015 and I.A.No.434 of 2015
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Dated this the 16th day of February, 2015.

O R D E R

Thottathil B.Radhakrishnan, J.

1. We have heard the learned counsel for the revision petitioner and the learned senior Government Pleader.

2. This revision is against an order of the Kerala Value Added Tax Appellate Tribunal under the Kerala Value Added Tax Act, 2003. The State carried an appeal to the Tribunal against a decision of the first appellate authority slashing the original order of assessment made against the firm of which the revision petitioner is a partner. The fact of the matter remains that no books of accounts was produced before the original appellate authority or before the first appellate authority. Though it is pointed out by the learned counsel for the revision petitioner that purchase bills were produced before the first appellate authority, the fact of the matter remains that in spite of notice and opportunity being given

by the Tribunal, the assessee neither appeared before the Tribunal nor produced any further material to support the findings of the first appellate authority. Examining the materials before us, we are of the view that the revision, as such, does not stricto senso give rise to any question of law which has been erroneously decided or which the Tribunal has failed to decide, however that in the realm of consideration of the case by the Tribunal, the assessee could have sought for opportunity to produce materials before the Tribunal or seek further opportunity to produce materials before any other authority as the Tribunal may direct, having regard to the totality of the facts and circumstances of hte case in hand. We are of the view that there was gross failure on the part of the assessee in failing to contest the proceedings before the Tribunal. Yet, taking a lenient view, we think that the assessee, including the revision petitioner, can be given a further opportunity, however, on terms.

In the result, it is ordered that if an amount of ₹25,000/- (Rupees twenty five thousand only) is paid as costs to the State Exchequer by appropriate remittance in the Treasury, within a period of three weeks from today, the impugned order of the Tribunal will stand set aside and the Tribunal will hear the appeal from which this revision arises and pass orders thereon de novo, after affording an opportunity of hearing to the assessee and the revision petitioner. If such deposit is made, the impugned sale will stand deferred to depend on orders that may be passed by the Tribunal. To pave way for that, for the time being, further proceedings on the basis of Annexure-H will stand stayed for a period of three weeks. That is the period within which costs as ordered in this order has to be deposited in terms of this order. Parties are directed to mark appearance before the Tribunal on 18.03.2015. This revision is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

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