IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

OT.Rev.No. 76 of 2015 ()
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AGAINST THE ORDER IN T.A.VAT NO.1095/2013 OF VALUE ADDED TAX APPELLATE TRIBUNAL, ADDL.BENCH,PALAKKAD DATED 03-12-2014.

PETITIONER/REVISION PETITIONER:
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M/S. SAUD SANITARY & TILES,
KUMARAMPUTHUR, MANNARKKAD,
PALAKKAD DISTRICT, REP. BY ITS PARTNER,
E.K. MOHAMMED SHAFI.

BY ADVS.SRI.P.N.DAMODARAN NAMBOOTHIRI
SMT.K.P.RANI

RESPONDENT/RESPONDENT:
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STATE OF KERALA,
REPRESENTED BY IT'S
SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER. SRI. LIJU STEPHEN

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 15-06-2015, THE COURT ON 18.06.2015 PASSED THE FOLLOWING:

P.T.O.

O.T.REV.NO.76 OF 2015

## APPENDIX

REVISION PETITIONER'S ANNEXURES:

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|---|---|
| ANNEXURE-I | TRUE COPY OF THE REGISTRATION CERTIFICATE NO.32091240835CDATED 30.05.2007 ISSUED TO THE PETITIONER. |
| ANNEXURE-II | TRUE COPIES OF THE SIR NOS.22962 & 22963 DATED 11.02.2010. |
| ANNEXURE-III | TRUE COPY OF THE NOTICE U/S. 44(8) & (10) NO.IPD-I/20/09-10 DATED 12.03.2010. |
| ANNEXURE-IV | TRUE COPY OF THE REPLY DATED 03.04.2010. |
| ANNEXURE-V | TRUE COPY OF THE BUILDING CERTIFICATE IN THE PANCHAYATH NO.B1-1003/010 DATED 15.02.2010. |
| ANNEXURE-VI | TRUE COPY OF THE RENT AGREEMENT DATED 15.02.2010. |
| ANNEXURE-VII | TRUE COPY OF THE REPLY DATED 03.08.2010. |
| ANNEXURE-VIII | TRUE COPY OF THE PENALTY ORDER NO.IPD-I-20/2009-2010 DATED 17.08.2010. |
| ANNEXURE-IX | TRUE COPY OF THE FIRST APPELLATE ORDER NO.KVATA 3430/10 DATED 22.11.2011. |
| ANNEXURE-X | TRUE COPY OF THE SAID SECOND APPEAL DATED 21.02.2012. |
| ANNEXURE-XI | TRUE COPY OF THE STAY ORDER NO.I.A. 192/2012 DATED 08.03.2012. |
| ANNEXURE-XII | TRUE COPY OF THE SECOND APPELLATE ORDER T.A. NO.1095/2013 DATED 03.12.2014. |

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

**ANTONY DOMINIC**
**&**
**SHAJI P. CHALY, JJ.**
**---------------------------------------------**
**O.T.Rev.No.76 of 2015**
**-----------------------------------------------**
**Dated this the 18th day of June, 2015**

**ORDER**

**Shaji P. Chaly, J.**

This revision is preferred by the assessee against the order of the K.V.A.T Additional Appellate Tribunal, Palakkad dated 03.12.2014 in T.A.(VAT) No.1095 of 2013. The brief facts leading to the case are as follows:

2. The revision petitioner herein, a partnership firm, is a registered dealer under the KVAT Act engaged in the sale and purchase of ceramic tiles and sanitary items. The Intelligence Officer, Squad No.I, Commercial Taxes, Palakkad, conducted an inspection at the place of business of the revision petitioner on 11.02.2010. As per the Registration Certificate provided to the petitioner, the place of business is "Saud Sanitary & Tiles, KP-V/4605, Chungam, Kumaramputhur". At the time of inspection, as per the Registration Certificate, the assessee had no other business place or godown or Branch. But, it was noticed by the Inspecting Squad that the assessee had stocked

tiles in Door No.V/471, consisting of 11 (eleven) shutters with locking facility in a separate building near to the business place of the assessee. On subsequent verification with reference to the documents, the Intelligence Officer found out that the petitioner had stored tiles valued at Rs.33,62,381/-in the undeclared godown and thereupon the assessing authority issued notice on 12.03.2010 under Sec.44(8) and (10) of the K.V.A.T Act, 2003 and proposed a penalty of Rs.16,81,190/- being 50% of the value of the goods found at the time of inspection.

3. The assessee had filed reply to the same, admitting the storage of goods and the valuation of the goods that was proposed by the assessing authority, but at the same time, contending that the details of these goods stored in the undeclared godown were reflected in the books of accounts maintained by the assessee and therefore the assessee had no intention of evading tax as provided under law and pleaded that he may be exempted from payment of penalty, and further that if at all penalty is proposed to be imposed, the maximum penalty as contemplated in the Act may not be levied upon the assessee.

4. However, the assessing officer, after evaluating the facts and circumstances and the objections raised by the assessee to the proposal notice and other documents on record, found that the assessee is liable to be penalised under Sec.44(8) and (10) of the K.V.A.T Act and therefore, imposed the penalty to the tune of Rs.16,81,190/-.

5. Even though the assessee had preferred 1st appeal against the said order of the assessing authority, the Appellate Authority fully endorsed the findings of the assessing authority and had affirmed the penalty imposed by the assessing authority after finding that the imposition of maximum penalty by it is in accordance with law and it finds no reason to interfere with the order.

6. Even though the assessee had preferred second appeal to the Appellate Tribunal, urging the very same contentions that were urged in the objection to the penalty proposed, the learned Appellate Tribunal also was not persuaded to accept the contentions raised by the assessee, and further it has also refused to reduce the penalty from 50% as pleaded by the assessee. This order of the learned Appellate Tribunal is under challenge before us.

7. Heard the learned counsel for the revision petitioner and the learned Senior Government Pleader, perused the records and the pleadings and questions of law raised by the assessee in the revision memorandum.

8. The learned Tribunal while considering the points urged by the revision petitioner has taken note of one basic fact that the godown from which the goods were found had 11 shutters and the quantity of goods kept in the undeclared godown was 25 truck loads. The contention raised by the revision petitioner that the additional godown in which the goods were stored is situated in a building wherein the local authority has not numbered the same and that was the reason why the fact of using the additional godown was not brought to the notice of the tax authorities, and that immediately on pointing out the same by the Inspecting Inspector, the assessee had applied for registration of the said godown also did not weigh with the Tribunal. The Tribunal has also considered the question raised by the assessee that the entire stock of goods were reflected in the books of accounts of the assessee and therefore, by stocking the goods in the unregistered godown, there was no attempt to evade payment

of tax.

9. The learned Tribunal has considered each and every points raised by the assessee and arrived at a definite conclusion that since the godown is admittedly an unregistered one, as provided in Sec.44(8) and (10), automatically the penalty provided therein will be attracted. We fully concur with this reasoning and findings of the Tribunal and in the facts and circumstances of the case, the Tribunal was fully justified in affirming the order of the lower authorities. Further, the learned Tribunal, taking into account the value of the goods and the quantity of the goods stored in the undeclared godown, was of the opinion that no leniency can be shown in view of the huge stock held by the assessee in an undeclared godown and therefore the assessee is liable to be penalised by imposing the maximum penalty. We do not propose to interfere with the factual findings of the Tribunal and there is also no illegality, infirmity or violation of any of the basic principles of law, warranting our interference invoking our powers conferred under Sec.63 of the K.V.A.T Act.

The revision fails and accordingly the same is dismissed.

Sd/-
**ANTONY DOMINIC**
**JUDGE**

Sd/-
**SHAJI .P. CHALY**
**JUDGE**

//true copy//

P.S. to Judge

St/-