IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY,THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

OT.Rev.No. 100 of 2015

AGAINST THE ORDER IN TA 1490/2013 of VALUE ADDED TAX APPELLATE TRIBUNAL, ADDL. BENCH, PKD DATED 25.11.2014

REVISION PETITIONER/APPELLANT/ASSESSEE:

N. SULAIMAN
N.S.CHICKEN AGENCY, KOTTAPPURAM,
MALAPPURAM.

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

RESPONDENT/RESPONDENT:

STATE OF KERALA

R BY GOVERNMENT PLEADER SRI.S.SUDHEESH KUMAR.

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 30-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE ASSISTANT COMMISSIONER, SPECIAL CIRCLE, COMMERCIAL TAXES, MALAPPURAM, FOR THE ASSESSMENT YEAR 2008-2009 DATED 30.8.2010.

ANNEXURE B:TRUE COPY OF THE FIRST APPELLATE ORDER PASSED BY DEPUTY COMMISSIONER (APPEALS) COMMERCIAL TAXES, ERNAKULAM, DATED 28-9-2011.

ANNEXURE C: TRUECOPY OF THE TRIBUNAL ORDER IN TA.VATNO.1490/13 DATED 25.11.2014.

ANNEXURE D: TRUE COPY OF THE CHALAN DATED 9.3.2012.

ANNEXURE E: TRUE COPY OF THE CHALAN DATED 29.3.2012.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

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O.T.Rev.No.100 of 2015

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Dated this the 30th day of June, 2015

JUDGMENT

Shaji P. Chaly, J.

This revision is preferred against the order of the Additional Appellate Tribunal, Palakkad in T.A.(VAT)No.1490/13 dated 25.11.2014 by which the Tribunal has confirmed the order of the Appellate Authority.

2. Brief facts of the case are as follows:

On verification of the assessment records of the revision petitioner, the Assessing Authority found that the return filed by the revision petitioner could not be accepted as correct for the reason that books of accounts were not produced for verification. It was also found that there was shortage in reporting purchase turnover of live chicken amounting to Rs.2,29,13,818/- when compared to the turnover declared at the check post and that purchase value declared at the check post differed from the purchase value conceded in the return. Therefore, the Commercial Tax Officer after complying with the procedures contemplated under law completed the assessment by adding 5% of the gross profit to the purchase value of live chicken. Eventhough an appeal was preferred to first appellate authority, same was dismissed. In appeal, Tribunal confirmed the order of the appellate authority. It is challenging the said order of the Tribunal, this revision is preferred.

3. Heard the counsel for the revision petitioner and the learned Government Pleader.

4. The learned Tribunal, after evaluating the facts and circumstances and the pleadings put forth by the revision petitioner, came to the conclusion that the price fixed by the Assessing Officer could not be said to be unreasonable or arbitrary. This was on the basis that the appellant had no case that sales were made at below the floor rate fixed by the Commissioner. The Tribunal has further held that the appellant has not produced any books of account before the authorities evidencing the sale price in order to establish that the revision petitioner has sold the chicken at such and such price. It was also found that Commissioner of Commercial Taxes as by his order dated 15.5.2008 has fixed the floor price at Rs.60/- per kg. for

arriving at the sale value of chicken 5% of the gross profit against the purchase value declared at the check post is proper and reasonable. Therefore, we are of the view that challenge against addition of 5% of the gross profit or against the adoption of price by the assessing authority cannot be sustained.

5. We do not find any infirmity or illegality in the order passed by the Tribunal justifying interference in the revisional jurisdiction conferred on us under Section 63 of the KVAT Act.

Therefore, the revision fails and it is accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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