IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

OT.Rev.No. 102 of 2015 ()

AGAINST THE ORDER IN TA(VAT) 538/2010 KERALA VALUE ADDED TAX/AGRL.INCOME TAX & SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, THIRUVANANTHAPURAM DATED 17-01-2015

REVISION PETITIONER/PETITIONER/ASSESSEE:-

MANNAM MEMORIAL NATIONAL CLUB
NEAR PRESS CLUB, STATUE, THIRUVANANTHAPURAM
REPRESENTED BY HONORARY SECRETARY
SRI.K.KRISHNA PILLAI.

BY ADVS.SRI.VIJAYAN. K.U.
SRI.K.V.VIMAL

RESPONDENT/REVENUE/RESPONDENTS:-

STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN - 695 001.

BY SENIOR GOVERNMENT PLEADER SRI.LIJU STEPHEN

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 06-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OT.Rev.No. 102 of 2015

APPENDIX

PETITIONER'S ANNEXUES:

ANNEXURE A1 : TRUE COPY OF THE COMPOUNDING OPTION IN FORM 1 D AND PERMISSION GRANTED BY THE ASSESSING AUTHORITY IN FORM 4D.

ANNEXURE A2 : TRUE COPY OF THE ORDER NO.32010692782/09-10 DATED 13.06.2011 ISSUED BY THE ASSESSING AUTHORITY.

ANNEXURE A3 : TRUE COPY OF THE MEMORANDUM AND GROUNDS OF APPEAL IN KVATA 164/09 FILED BY THE REVISION PETITIONER.

ANNEXURE A4 : TRUE COPY OF THE ORDER NO.KVATA 164/09 DATED 16.06.2010.

ANNEXURE A5 : TRUE COPY OF THE APPEAL MEMORANDUM AND GROUNDS OF APPEAL IN T.A.(VAT) 538/10.

ANNEXURE A6 : TRUE COPY OF THE ORDER NO.TA(VAT) 538/10 DATED 17.01.2015 ISSUED BY THE TRIBUNAL.

ANNEXURE A7 : TRUE COPY OF THE RELEVANT PORTION OF THE LEDGER SHOWING NIL RECIEPTS ON BAR ACCOUNT AND RECEIPTS FROM NATIONAL RESTAURANT ON 'DRY DAYS' FOR THE MONTHS OF APRIL, MAY AND JUNE, 2009.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

O.T.(Rev) No.102 of 2015

Dated this the 6th day of July, 2015

JUDGMENT

Antony Dominic,J.

The assessee is a club which has been issued licence under the Foreign Liquor Rules. The club has also a restaurant which is housed in a building which has a number different from the one in respect of which they were issued licence under the Foreign Liquor Rules. For the assessment year 2008-2009, in respect of the restaurant, they had applied for payment of tax under the KVAT Act at compounded rates. That application was allowed and they have paid tax at compounded rates. For the subsequent assessment year, 2009-2010, they applied for payment under the compounding scheme. That was rejected and assessment was completed. That assessment order was confirmed by the Appellate Authority and the Tribunal. It is in this background the assessee has filed this revision.

2. We heard the counsel for the revision petitioner and the learned Government Pleader appearing for the respondent.

3. Contention raised by the learned counsel for the revision petitioner is that the restaurant is housed in a premises which is different from the one licensed under the Foreign Liquor Rules and that therefore, the ineligibility contained in Section 8(c)(i) of the KVAT Act is not attracted in respect of the restaurant in question. It is also contended that for the previous assessment year, when compounding was allowed, in the absence of any change of law, there is no justification for denying the same benefit for the succeeding year.

4. We have considered the submissions made.

5. Reading of provisions of the statute shows that a club like that of the assessee, which has been issued the licence under the Foreign Liquor Rules, is ineligible for payment of tax at compounded rate. It may be true that the premises where the assessee is carrying the restaurant in question has a building number which is different from the one in relation to which the licence has issued under the Foreign Liquor Rules. So long as the licence under the Foreign Liquor Rules is issued in the assessee itself, even it is assumed that the restaurant is separate from the premises licensed under the Foreign Liquor Rules the

ineligibility in our view is attracted. Further to accept the contention of the petitioner that the restaurant is a separate establishment, no supporting documents were also produced. If that be so, the authorities are right in concluding that the assessee was not eligible for the benefit claimed.

It is true that compounding was allowed for the previous year. However, that by itself will not preclude the statutory authorities from denying an ineligible benefit for the succeeding years and there is nothing which compels them to perpetuating an illegality.

We, therefore, do not find any illegality in the orders passed. Revision fails and it is accordingly dismissed.

Sd/-

ANTONY DOMINIC
JUDGE

Sd/-

SHAJI P. CHALY
JUDGE

smv