IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY,THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

OT.Rev.No. 110 of 2015 ()

AGAINST THE ORDERIN TA(VAT) 1241/2011 of KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM DATED 19.02.2015

REVISION PETITIONER:

SAJIMON GEORGE,
PALAPPURAM RUBBERS, KOZHIPPILLY,KOTHAMANGALAM.

BY ADVS.SRI.M.K.SUBHAKARAN
SRI.P.P.VARUGHESE
SRI.ANIL KUMAR M.S.

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY ASSISTANT COMMISSIONER(KVAT)
SPECIAL CIRCLE, PERUMBAVOOR.

BY SENIOR GOVERNMENT PLEADER SRI.LIJU STEPHEN

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 17-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OT.Rev.No. 110 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE – A : TRUE COPY OF THE ASSESSMENT.

ANNEXURE – B : TRUE COPY OF THE APPEAL ORDER NO.KVATA 4022/2010 DATED 22.06.2011.

ANNEXURE – C : TRUE COPY OF THE ORDER OF THE APPELLATE TRIBUNAL IN T.A.(VAT) NO.1241/2011 DATED 19.02.2015.

ANNEXURE – D : TRUE COPY OF THE NOTICE ISSUED BY INTELLIGENCE INSPECTOR DATED 27.11.2007.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

O.T. Revision Petition No.110 of 2015

Dated this the 17th day of August, 2015

ORDER

Shaji P. Chaly, J.

This revision is filed by the assessee against the order dated 19.02.2015 passed by the Value Added Tax Appellate Tribunal, Ernakulam in Appeal No. 1241 of 2011 by which the Tribunal has reversed the order of the First Appellate Authority and sustained the penalty order passed by the Assessing Authority.

2. Brief facts for the disposal of the revision are as follows:

3. On 27.11.2007 the Intelligence Squad No.IV, Mattanchery has intercepted vehicle bearing No.KL 7 AX 471 and several defects were noticed in the accompanying documents. Thereupon, after complying with the procedures contemplated under law, self assessment for the year 2007-2008 was re-opened and re-assessment was done.

4. Aggrieved by the said order of the Assessing Authority, revision petitioner preferred appeal before the First Appellate

Authority and the First Appellate Authority reversed the order of the Assessing Authority holding that since the penalty order passed by the Intelligence Officer was set aside by the First Appellate Authority, the re-assessment done on the basis of the penalty order could not be sustained.

5. Aggrieved by the said order, Revenue preferred an appeal before the Tribunal and the Tribunal after taking into account the facts and circumstances of the case and the law involved has found that the delivery note accompanied the consignment was dated 27.11.2007 but the same was entered in the stock register only on 28.11.2007 i.e. the date after interception. At the time of hearing the appeal, the Revenue produced the order of the Tribunal in TA(VAT) No.504/2011 dated 20.12.2014 by which the Tribunal had allowed the appeal of the Revenue and sustained the penalty order passed by the Assessing Authority. Taking into account that aspect also the appeal filed by the Revenue was allowed. It is this order which is under challenge.

6. Heard the learned counsel for the petitioner and the learned Senior Government Pleader.

7. Learned counsel for the petitioner contended that the finding of the Assessing Authority that when the vehicle was

intercepted at 19:00 hours on 27.11.2007, there was a time lag of 13 hours was not correct. He further brought our attention to Annexure-E order of the Tribunal in R.P. No.4/2015 in TA(VAT) No.504/2011 and contended that, the Tribunal has reversed such a finding of the assessing authority in the review order supra. It is true that in the review filed, the Tribunal has vacated the finding so entered by the Assessing Authority. However, in spite of such a finding, the penalty order passed by the Assessing Authority was sustained. Learned counsel for the petitioner contended that the order of the Assessing Authority restored by the Tribunal in second appeal was unsustainable.

8. We have perused the pleadings and documents produced along with the revision petition and we find that the order passed by the Tribunal was based purely on facts and circumstances involved in the case. On a reading of the order of the First Appellate Authority it is clear that it did not consider the case on merit, but on the other hand the appeal filed by the petitioner was allowed only on the basis that, the penalty order, based on which the re-assessment was done, was set aside and hence, the re-assessment order could not be sustained under law. On the other hand, the learned Appellate Tribunal has considered the subject matter on merits and has arrived at a

factual finding that documents revealed willful suppression by revision petitioner. Therefore, there is no illegality or any other legal infirmity so as to interfere with the factual finding entered by the Tribunal.

Revision fails and accordingly it is dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

smv