IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 12TH DAY OF AUGUST, 2015/21ST SRAVANA, 1937

OT.Rev.No. 114 of 2015 ()

AGAINST THE ORDER IN R1-1847/2015/CT of COMMR. OF COMMERCIAL TAXES, THIRUVANANTHAPURAM DATED 13-05-2015.

REVISION PETITIONER(S)/REISION PETITIONER/ASSESSEE:

KAMAKSHI CONSTRUCTIONS,
T.C 32/4250, PAZHAYANADAKKAVU, THRISSUR - 680 001.
REPRESENTED BY ITS MANAGING PARTNER, R. PARAMESWARAN.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENT(S)/RESPONDENT/REVENUE:

STATE OF KERALA,
REPRESENTED BY THE COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM - 695 002.

BY SENIOR GOVERNMENT PLEADER, SRI. LIJU STEPHEN

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 05.08.2015, THE COURT ON 12.08.2015 PASSED THE FOLLOWING:

P.T.O.

O.T.REVN. NO.114 OF 2015

APPENDIX

REVISION PETITIONER'S ANNEXURES:

ANNEXURE A:	COPY OF AGREEMENT DATED 10.01.2004 ENTERED INTO WITH M/S. S.I. PROPERTY (KERALA) PRIVATE LIMITED, KOWDIAR, THIRUVANANTHAPURAM.
ANNEXURE-A1	COPY OF SUPPLEMENTARY AGREEMENT DATED 20.08.2004.
ANNEXURE-B	COPY OF PENALTY ORDER DATED 08.02.2008 ISSUED BY THE I NTELLIGENCE OFFICER (IB), THRISSUR U/S. 67.
ANNEXURE-B1	COPY OF PENALTY ORDER DATED 08.02.2008 ISSUED BY THE INTELLIGENCE OFFICER (IB), THRISSUR U/S.68.
ANNEXURE-C	COPY OF ORDER DATED 24.06.2008 OF THE DEPUTY COMMISSIONER (APPEALS), ERNAKULAM.
ANNEXURE-D	COPY OF LETTER DATED 21.08.2008 COLLECTIVELY.
ANNEXURE-E	COPY OF PENALTY ORDER DATED 23.05.2011 ISSUED BY THE INTELLIGENCE OFFICER (IB), THRISSUR U/S.67.
ANNEXURE-E1	COPY OF PENALTY ORDER DATED 20.03.2012 ISSUED BY THE INTELLIGENCE OFFICER (IB), THRISSUR U/S.68.
ANNEXURE-F	COPY OF ORDER DATED 11.12.2014 ISSUED BY THE DEPUTY COMMISSIONER, THRISSUR.
ANNEXURE-G	CERTIFIED COPY OF ORDER DATED 13.05.2015 OF THE COMMISSIONER OF COMMERCIAL TAXES.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

O.T.Rev. No.114 of 2015

Dated this the 12th day of August, 2015

O R D E R

Shaji P. Chaly, J.

This revision is filed against the order passed by the Commissioner of Commercial Taxes, Thiruvananthapuram in R1-1847/15/CT dated 13.05.2015, whereby the Commissioner has affirmed the order of the Revisional Authority which has interfered with the order of the Intelligence Officer (IB) and fixed the penalty equivalent to the tax liable to be paid by the revision petitioner.

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

3. The revision petitioner who was a developer engaged in construction of multi-storied residential-cum-commercial Complex within the Thrissur Corporation limits. Petitioner entered into an agreement with M/s. S.I. Property (Kerala) Private Ltd., Thiruvananthapuram for construction of building complexes as per agreements dated 10.01.2004,

15.03.2004 and 15.10.2004. The Intelligence Wing conducted an enquiry and issued notice to the petitioner in Form No.22 as provided under Sec.44 of the K.V.A.T Act. But, in spite of the same, the revision petitioner had not complied with the direction contained in the notice nor produced the books of accounts. Thereupon, the Intelligence Officer imposed a penalty of Rs.56,43,750/- as per his order dated 08.02.2008.

4. Being aggrieved by the said order, the petitioner filed an appeal and the Deputy Commissioner (Appeals) has set aside the penalty order as per his order dated 24.06.2008, remitted the matter back and directed the assessee to produce all relevant documents before the Intelligence Officer for passing a fresh order.

5. Pursuant to the remittance of the proceedings, the Intelligence Officer issued summons on 14.08.2009 and 12.10.2009 but the petitioner neither produced the required evidence nor responded to the summons issued and in such circumstances the original order of penalty dated 08.02.2008 was restored by the Intelligence Officer.

6. Aggrieved by the same, revision petitioner has again preferred revisions before the Deputy Commissioner for the assessment year 2007-2008 against the penalty imposed under Secs.67 and 68 of the K.V.A.T Act, 2003. The Deputy Commissioner set aside the penalty imposed under Sec.67, sustained the penalty imposed under Sec.68, but reduced the penalty amount to Rs.22,57,882/- being the admitted tax due on the work awarded by the assessee. Aggrieved by the said order, the petitioner preferred revision before the Commissioner, who in turn, has affirmed the order of the 1st Appellate Authority.

7. The order shows that Commissioner has considered the contentions raised by the revision petitioner, perused the records and the evidence produced by the petitioner and found that the petitioner had obtained Form No.20B as stipulated in Rule 42 in which VAT due was disclosed as 'Nil' only after the date of original penalty order passed by the Intelligence Officer. Therefore, it was found that the revision petitioner had belatedly remitted the entire tax and interest. It was also found that the revision petitioner had actually deferred payment of tax for a certain period. The observations of the

1st Appellate Authority that deferment is equal to evasion of tax was also upheld. It was further held that when a certain procedure is prescribed under a statute, the revision petitioner was bound to follow the same and having not done so, he was liable to be penalized as contemplated under the Act. It was also held that by virtue of Sec.10 of the K.V.A.T Act read with Rule 32 of the Rules framed thereunder, every works contractor registered under the K.V.A.T Act shall deduct tax from every payment, including advance payment, made by him to any works contractor liable to pay tax under Sec.6 in relation to any works contract awarded. But the revision petitioner failed to comply with the specific mandate contained in the said provisions. Therefore, the Commissioner found that the Deputy Commissioner (Appeals) was justified in law in sustaining the penalty order passed by the Intelligence Officer and therefore affirmed the view taken by the Deputy Commissioner who reduced the penalty to an amount equal to the tax due.

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

9. We have perused the pleadings contained in the revision and the documents produced along with the same and appreciated the contentions advanced by the learned counsel for the rival parties.

10. The Commissioner has taken into account the entire factual situations in the case and has come to a definite conclusion that there was delay on the part of the revision petitioner in the matter of payment of tax and therefore the penalty imposed was declined to be interfered with. Admittedly, the tax and interest was paid by the revision petitioner after the initial order was passed by the Intelligence Officer. Therefore, by any stretch of imagination, we cannot find fault with the findings rendered by the Commissioner and in such circumstances, we find that the penalty order passed by the Intelligence Officer and upheld by the statutory authorities cannot be said to be illegal. We do not also find any reason to entertain nor to frame any substantial questions of law in the subject matter.

11. The learned counsel for the revision petitioner contended that at any rate the quantum of penalty even though modified by the First Appellate Authority to an amount

of Rs.22,57,882/- was still on the higher side. He also contended that though belatedly since tax with interest was paid, there was no *mala fide* intention on the part of the revision petitioner to evade payment of tax. The learned Senior Government Pleader, on the other hand, contended that the penalty imposed is reasonable and just taking into account the belated payment of tax.

12. We have considered the rival submissions on that point and we are of the considered opinion that since tax with interest was remitted immediately after the original penalty order was passed, there was only a delay on the part of the revision petitioner to remit the tax collected. Therefore we feel that the penalty imposed at the rate equal to the tax amount due from the revision petitioner was too harsh and therefore is unsustainable. According to us, in the circumstances, an amount of Rs.5,00,000/- (Rupees Five Lakhs only) would be a reasonable amount of penalty. Therefore even though we sustain the order of the Commissioner, we modify the quantum of penalty amount to Rs.5 lakhs.

13. The revision petitioner shall remit the amount within a period of three weeks from the date of receipt of a copy of this order, failing which, we direct the Intelligence Officer to modify the order accordingly and raise demand against the revision petitioner for recovery of Rs.5,00,000/- together with statutory interest from the date of the order of the Intelligence Officer.

Revision is disposed of accordingly.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-