IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

OT.Rev.No. 116 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN TAVAT 368/2013 of KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM DATED 24-11-2014

REVISION PETITIONER(S)/RESPONDENT/ RESPONDENT/REVENUE:

STATE OF KERALA
REP. BY THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, ERNAKULAM.

BY ADV.SOBHA ANNAMMA EAPEN, SR. GOVERNMENT PLEADER

RESPONDENT(S)/APPELLANT/APPELLANT/ASSESSEE:

C.K.P. GRANITE
MAMALA, THIRUVAMKULAM
REP BY ITS PROPRIETOR C.P.PRATHAPAN, PIN 682 305.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
BY ADV. SRI.R.JAIKRISHNA

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 13-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OTREV.116/15

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A : COPY OF PENALTY ORDER ISSUED BY THE INTELLIGENCE OFFICER DATED 23.05.2011.

ANNEXURE B : COPY OF ORDER DATED 26.03.2013 IN KVAT (A) 1926/11 ON THE FILE OF THE DEPUTY COMMISSIONER (APPEALS-I), COMMERCIAL TAXES, ERNAKULAM.

ANNEXURE C : COPY OF ORDER OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM DATED 24.11.2014.

//TRUE COPY//

PA TO JUDGE.

jg-13/11

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

....

O.T.Rev.No.116 of 2015

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Dated this the 13th day of November, 2015.

ORDER

Thottathil B.Radhakrishnan, J.

1. Heard the learned Senior Government Pleader and the learned counsel for the respondent.

2. Following earlier orders, the learned Government Pleader had reported that assessment proceedings for the year in question was also completed in relation to the assessee on the basis of the penalty order which was impugned before the Tribunal and which leads to this revision. The learned counsel for the assessee-respondent states that the said assessment order is now pending in appeal before the Appellate Tribunal.

3. We have adverted to and considered the facts leading to the decision by the Appellate Tribunal. The Appellate Tribunal followed the ratio of decisions of this Court in U.K.Monu Timber v. State of Kerala [2012(3) KHC 111] and of the Tribunal in Smt.Khadeeja Makkar, Paimattom Granites, Kothamangalam's

case [TA(VAT) 201/2010 & 202/2010], which has since been affirmed by this Court. We see that the Tribunal was justified in taking the view that the Intelligence Officer will have to reconsider the issue and re-fix penalty on the basis of the suppressed turnover actually detected. Obviously, that does not mean that the penalty should be equivalent to the actual suppression detected. It is left to the wisdom of the Intelligence Officer to impose such penalty as the situation may deserve, having regard to the entire materials, which will be considered by the Intelligence Officer following the order of remit made by the Appellate Tribunal. We do not see any question of law having been left undecided by the learned Tribunal or that any question of law has been erroneously decided by it. This O.T.Revision, therefore, fails.

In the result, this O.T.Revision is dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)

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