IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

OT.Rev.No. 167 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN TA(VA 1193/2013 of VALUE ADDED TAX APPELLATE TRIBUNAL,ADDL.BENCH,PKD DATED 31-03-2015

REVISION PETITIONER(S)/REVISION PETITIONER/APPELLANT/APPELLANT/ASSESSEE:

M/S.MALABAR TRADERS,
THRISSUR ROAD, CHANGARAMKULAM, MALAPPURAM,
REPRESENTED BY ITS MANAGING PARTNER
SAINU NECHIKKAL.

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

RESPONDENT(S)/RESPONDNET/RESPONDENT:

STATE OF KERALA

BY SR. GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 01-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.
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O.T.Rev.No. 167 of 2015
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Dated this the 1st December, 2015

O R D E R

Thottathil B.Radhakrishnan, J.

The issue raised in this revision under Section 63 of the KVAT Act revolves around the denial of input tax credit. There was controversy as to whether the petitioner had claimed the input tax credit on the basis of purchase bills which he had produced. The Tribunal held that the eligibility for input tax credit was not available. Hearing the learned counsel for the petitioner and the learned Senior Government Pleader, the following order was issued on 20.10.2015:

> *"The learned counsel for the revision petitioner points out that the findings in para 10 of the impugned order under point No.111 that there are no tax invoices in the prescribed form or evidence that the same have been issued by the selling dealer is unsustainable because tax invoices and requisite materials have been produced before the assessing authority, though not to cover the entire extent of claim of IPT credit. The learned Senior Government Pleader will ascertain from the CTO, Audit Assessment, Malappuram as to whether materials were produced by the assessee to claim IPT Credit, that is to say as to whether there were tax invoices, at least towards any portion of the IPT Credit sought for. No other issue arises for decision in this revision.*
>
> *Any revenue recovery proceedings initiated against the revision petitioner on account of the order impugned before the Tribunal shall not be enforced for a period of four weeks."*

Following that, a statement has been placed on record by the Assistant Commissioner in the office of the Deputy Commissioner (Law), Ernakulam, evidently on the basis of the files. The said statement shows that the Audit Assessment Wing verified the books of accounts of the dealer and the irregularities noticed related to a total amount of Rs.6,134/-. That included Rs.3,627.02 on account of non production of the bills for which the input tax credit was claimed and an amount of Rs.2,506.88 which were not allowable. This means that as against the input tax claim of Rs.1,54,545/-, the revision petitioner was entitled to IPT credit of an amount equivalent to Rs.1,54,545/- - Rs.6,134/- = Rs.1,48,411/-.

2. Strictly speaking, the aforesaid issue could not be treated as one that could give rise to a question of law for adjudication in a revision. What we have noted above is not on the basis of adjudication by this Court, but on the basis of the information furnished by the department. To secure the ends of justice all that is required is that the revision petitioner is given input tax credit to the extent of the aforesaid sum of Rs.1,48,411/-. It is so directed and the OTR is ordered accordingly.

THOTTATHIL B.RADHAKRISHNAN
JUDGE

ANU SIVARAMAN
JUDGE

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