IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

OT.Rev.No. 63 of 2014 ()

ORDER IN TA(VAT) 975/2011 of KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM DATED 08-11-2013

REVISION PETITIONER/APPELLANT/REVENUE: :

STATE OF KERALA

BY SENIOR GOVERNMENT PLEADER SRI.LIJU STEPHEN

RESPONDENT/APPELLANT/ASSESSEE:

K.O.RAPPAI
MAHARANI JEWELLERS, M.O.ROAD, THRISSUR.

BY ADV. SRI.K.B.GANGESH

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 05-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OT.Rev.No. 63 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE COMPOUNDED PERMISSION DATED 25.05.2010 ISSUED BY THE COMMERCIAL TAX OFFICR, FIRST CIRCLE, THRISSUR

ANNEXURE B: TRUE COPY OF THE ORDER DATED 22.03.2011 PASSED BY THE COMMERCIAL TAX OFFICER, FIRST CIRCLE, THRISSUR

ANNEXUE C: CERTIFIED COPY OF THE ORDER DATED 08.11.2013 PASSED BY THE TRIBUNAL IN T.A. (VAT) NO.975/2011.

RESPONDENT'S ANNEXURE: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

O.T.(Rev) No.63 of 2014

Dated this the 5th day of June, 2015

ORDER

Antony Dominic,J.

This revision is filed by the Revenue aggrieved by the order of the Kerala Value Added Appellate Tribunal in T.A(VAT) No.975 of 2011.

2. The respondent is a registered dealer engaged in the business of gold and jewellery items. For the assessment year 2010-2011, they had opted for compounding under Section 8(f)of the KVAT Act. Subsequently in exercise of his power under Section 8(f)(ii), the Commercial Tax Officer passed Annexure-D order dated 22.03.201 cancelling the order allowing compounding.

3. By the impugned order, the Tribunal set aside the order of cancellation. It is this order of the Tribunal which is under challenge in this revision filed by the State.

4. Reading of the order passed by the Commercial Tax Officer shows that two reasons have been assigned for

cancellation. First one is that the assessee has shifted his place of business and the second is that in the street survey conducted on 20.10.2013 it was noticed that the closing stock exceeded two times the previous year's closing stock. The Tribunal held, both these grounds are untenable and it is on that basis the Tribunal has set aside the order of cancellation.

5. We heard the learned Government Pleader and the learned counsel appearing for the respondent assessee.

6. Section 8(f) of the KVAT Act provides for compounding by a dealer of jewellery ornaments. Section 8(f)(ii), at the relevant time provided that the assessing authority, may, for valid and sufficient reasons, such as shifting of place of business, holding of stock exceeding double the quantity held in the previous year, furnishing of false information, suppression of relevant information, failure to furnish such information demanded, refuse permission to pay tax under the compounding scheme and cancel the permission, if any, granted. This provision shows that shifting of place of business and holding of stock exceeding double the quantity held in the previous year, which are the grounds relied for cancelling the compounding allowed, were part of Section 8(f)(ii). Therefore, what is to be

seen is whether these grounds were made out in this case.

7. In so far as shifting of place of business is concerned, going by the order passed by the Commercial Tax Officer himself, he has inferred a case of shifting of business, only on the allegation that the existing showroom has been expanded. Shifting of the place of business has a definite connotation and that requirement cannot be said to be made out in this case. Therefore, we are unable to see a case of shifting of place of business in so far as this case is concerned.

8. Regarding the ground of holding of stock exceeding double the quantity held in the previous year is concerned, the fact that the stock held by the assessee on the date of survey was in excess of double the quantity held in the previous year, is undisputed. This factual position was sought to be explained by the assessee by contending that he had a partnership jewellery business at Perumbavoor and that on closure of that establishment, the available stock was brought to the shop in question. However this explanation of the assessee was offered only before the appellate authority and in fact he did not even reply to the notice issued in terms of the proviso to Section 8(f)(ii).

9. Section 8(f)(ii) is attracted when the stock held is in excess of double the quantity held in the previous year irrespective of the source from which the assessee acquired the stock. As we have already stated, the admitted factual position is that the stock was double the quantity that was held by the assessee in the previous year. Therefore, as on the date of cancellation, the compounding was liable to be cancelled and therefore, the Commercial Tax Officer was fully justified in doing so. The contrary view taken by the Tribunal cannot be sustained.

The order of the Tribunal in T.A.(VAT) No.975 of 2011 is therefore set aside and the revision will stand allowed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. to Judge

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