IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

OT.Rev.No. 186 of 2014 ()

AGAINST THE ORDER IN TAVAT 1113/2011 of the KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM DATED 14-05-2014.

REVISION PETITIONER/RESPONDENT/REVENUE:

THE STATE OF KERALA

BY SR. GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

RESPONDENT/APPELLANT/ASSESSEE:

M/S GUARDIAN ELECTRONICS,
KARUMPATTA CORSS ROAD, ERNAKULAM-682 036.

R1 BY ADV. SRI.K.P.ABDUL AZEES
BY ADV. SMT.C.AMRITA
BY ADV. SMT.T.ARCHANA

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 13-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.

O.T. Rev. No.186 of 2014

Dated this the 13th day of January, 2015

<u>ORDER</u>

<u>Thottathil B. Radhakrishnan, J.</u>

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

2. A penalty order was issued imposing penalty under Sec.67(1) of the KVAT Act on the respondent. That was done by borrowing the findings of the competent authority under the Customs Act following the detection of suppression of value of goods imported. The Deputy Commissioner (Appeals) allowed the assessee's appeal by holding that there is no independent consideration or enquiry by the Enquiry

Officer and having regard to the definitions of 'sale price' and 'purchase price' in the KVAT Act, only an independent enquiry can lead to a finding that there is suppression. The Deputy Commissioner (Appeals) thereby set aside the penalty order and remanded the matter to the original authority for re-consideration. The Tribunal refused to interfere with that remand order. Having heard the learned counsel for the parties, we see that the only ground that can be projected is as to whether the remand order is sustainable in law. The Appellate Tribunal affirmed the findings of the Deputy Commissioner (Appeals) that there is no independent consideration of the facts by the first authority. That is a matter which cannot be disputed, going by the records. The Deputy Commissioner (Appeals) stood well advised having regard to the provisions of the KVAT Act that an independent enquiry was called for before imposing a penalty order. Under such circumstances, we do not see any error in the decision of the Tribunal affirming the decision of the Deputy Commissioner (Appeals). The Tribunal has not erroneously decided any question of law on the facts of the case. It cannot also be criticised as having left undecided any question of law arising in this case. Under such circumstances, we see no merit in the revision.

In the result, this revision is dismissed.

Sd/-

(**THOTTATHIL B. RADHAKRISHNAN, JUDGE)**

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge