IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY,THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

O.T.Rev.No. 207 of 2014

AGAINST THE ORDER IN T.A.VAT 409/2013 of VALUE ADDED TAX APPELLATE TRIBUNAL, ADDL.BENCH, PALAKKAD DATED 20-02-2014

REVISION PETITIONER/RESPONDENT:

STATE OF KERALA

BY ADV. GOVERNMENT PLEADER SRI.LIJU STEPHEN

RESPONDENT/APPELLANT:

M/S. PENTIUM CONSTRUCTION (P) LTD.
MANANCHIRA TOWER, A.G. ROAD, KOZHIKODE.

R BY ADV. SRI.R.RAMADAS

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 26-05-2015, ALONG WITH OTRV. 213/2014, OTRV. 214/2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ASSESSMENT ORDER 10.2.2009 PASSED BY THE COMMERCIAL TAX OFFICER II, WORKS CONTRACT, COMMERCIAL TAXES, KOZHIKODE.

ANNEXURE B: TRUE COPY OF THE COMMON FIRST APPELLATE ORDER DATED 29.9.2010 PASSED BY THE DEPUTY COMMISSIONER (APPEALS) I, COMMERCIAL TAXES, KOZHIKODE IN VATA NO.187/2009, 188/09 AND 189/09.

ANNEXURE C: CERTIFIED COPY OF THE COMMON ORDER OF THE TRIBUNAL DATED 20.2.2014 IN T.A.VAT NO.409/13, 330/13 AND 410/13.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

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O.T.Rev.(VAT) Nos.207, 213 & 214 of 2014

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Dated this the 26th day of May, 2015

Antony Dominic, J.

These revisions are filed by the State aggrieved by Annexure C common order passed by the Tribunal allowing the appeals filed by the respondent assessee and directing the Assessing Officer to redo the assessments for the assessment years 2005-06, 2006-07 and 2007-08 by levying the tax at the compounded rate on the basis of the application submitted by the assessee on 19.7.2008.

2. We heard the learned Government Pleader appearing for the petitioners and the learned counsel appearing for the assessee.

3. The short question that arises for consideration is whether the assessee is eligible for the benefit of Section 16(2) of the Kerala Value Added Tax Act in respect of the assessments for the assessment years 2005-06 to 2007-08. In so far as these assessment years are concerned, the contention raised by the learned Government Pleader is that assessments under Section 25 of the Kerala Value Added Tax Act were

completed in February 2009 and that therefore the assessee cannot take advantage of Section 16(2), which was introduced into the Act only with effect from 1.4.2009. Reading of the order passed by the Tribunal shows that in upholding the entitlement of the assessee, the Tribunal has followed the order passed by this Court in W.A.No.7874/09.

4. It is contended by learned Government Pleader that though the assessees, who obtained registration under Section 16(2), are also statutorily made eligible for the benefit of opting for payment of tax at compounded rates under Section 8, the same is subject to eligibility and that once the assessments under Section 25 is completed, the assessee is ineligible to opt for payment of tax at compounded rates. This contention cannot be accepted for the reason that in the judgment in W.A.7874/2009 referred to above, this Court had dealt with a case where the assessee therein had not obtained registration under the Act and was penalised. Thereafter, assessment under Section 25 was also completed. It was thereafter

that he applied for compounding taking advantage of Section 16(2). That entitlement of the assessee was upheld by this Court in the judgment referred to above. If that principle, the correctness of which cannot be doubted, is applied to the facts of these cases, it can be seen that the assessee cannot be denied the benefit of compounding as provided under Section 16(2), only on the ground that assessments were already completed under Section 25 of the Kerala Value Added Tax Act. Therefore, contention of the learned Government Pleader cannot be accepted.

5. Be that as it may, from the order of the Tribunal we find that the Tribunal has directed that the assessments for the years in question be redone allowing tax at the rate of compounded rate on the basis of the applications submitted by the assessee on 19.7.2008. Facts pleaded by both sides show that the applications made by the assessee on 19.7.2008 were under Section 20A of the Kerala Value Added Tax Act and for condonation of delay. These applications were already rejected and it was thereafter that on 25.4.2009 the assessee

made the applications under Section 16(2). Therefore, the Tribunal was in error in ordering that further action as directed to be taken on the basis of the applications dated 19.7.2008 and instead it should have been on the basis of the applications under Section 16(2) of the Kerala Value Added Tax Act made on 25.4.2009.

Subject to the above modifications, the revisions stand dismissed.

ANTONY DOMINIC
JUDGE

SHAJI P. CHALY
JUDGE

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