IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

ST.Rev..No. 73 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN TA 1/2011 of
S.T.A.TRIBUNAL,ADDL.BENCH, KOZHIKKODE, DATED 30-05-2011

REVISION PETITIONER(S)/RESPONDENT/REVENUE:

STATE OF KERALA

BY ADV. LIJU V.STEPHEN, SR.GOVERNMENT PLEADER

RESPONDENT(S)/APPELLANT/ASSESSEE:
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* MR.M.BHASKARAN
P.A.HOLDER OF M.KUNHIKANNAN
PROPRIETOR OF PRATHEEKSHA INTERNATIONAL, THAVAM
PAYANGADI, PIN 670303.

* THE NAME AND ADDRESS OF THE POWER OF ATTORNEY HOLDER OF RESPONDENT IS AMENDED AS MR.SAJESH SANKAR P.V., S/O.LATE SANKARAN NAIR, SAJI NIVAS, P.O.MAVOOR, CALICUT, PIN - 673 661, P.A.HOLDER OF M.KUNJIKKANNAN, PROPRIETOR OF PRATHEEKSHA INTERNATIONAL, THAVAM, PAYANGADI, VIDE ORDER DATED 01.10.2014 IN I.A.NO.2301/14.

BY ADV. SRI.RAJESH NAMBIAR

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 30-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A : COPY OF ORDER DATED 25.01.2010 PASSED BY THE INTELLIGENCE OFFICER, SQUAD NO.1, COMMERCIAL TAXES, THALASSERY.

ANNEXURE B : COPY OF THE FIRST APPELLATE ORDER DATED 02.11.2010 PASSED BY THE DEPUTY COMMISSIONER (APPEALS) II, KOZHIKODE.

ANNEXURE C : COPY OF ORDER DATED 30.05.2011 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH IN TA NO.1/11.

//TRUE COPY//

PA TO JUDGE.

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THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

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S.T.Rev.No.73 of 2012

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Dated this the 30th day of January, 2015.

O R D E R

Thottathil B.Radhakrishnan, J.

1. We have heard the learned Government Pleader and the learned counsel for the respondent, quite in extenso.

2. Jurisdictional Intelligence Officer inspected the place of business of the dealer which runs a bar hotel. Penalty was imposed on ground that the gross profit disclosed by the accounts is low. Though the Intelligence Officer had also, initially, stated that there was stock variation, as rightly noted by the first appellate authority and the Kerala Sales Tax Appellate Tribunal, subsequent verification of accounts with reference to the shop inspection report disclosed no stock variation. Thus, the penalty order passed by the Intelligence Officer was one imposing penalty for low gross profit. The first appellate authority reduced the penalty imposed by the Intelligence Officer by 50%. The modification

made by the first appellate authority was on the ground that gross profit could not have been determined on the basis of one commodity. The Tribunal concluded that the exercise of fixing the penalty was done on the basis of one item of liquor, namely, the sale value of honey bee brandy. The Tribunal, in our view, quite rightly, took the view that to arrive at an evaluation of gross profit which could be treated as suppressed, exercise has to be carried out having in view various factors, such as locality, population of area, demand for the goods, etc. The Tribunal accepted the dealer's plea that the establishment is in a small town by name Payyangadi. It was noted that the importance of the locality has not been stated at all in the penalty order by the Intelligence Officer. On facts, the Tribunal concluded that there was no reason to independently sustain the penalty order. Hearing the learned Government Pleader, in the light of the statutory provisions, relating to penalty as contained in Section 45A of the Kerala General Sales Tax Act, 1963 and also bearing in mind the scope of the assessment proceedings coupled with the power to impose penalty as is available under Section 19B read with sub-sections (2) to (4) of Section 19 of that Act, we do not find that any question of law arising for decision in the case has been left undecided by the Tribunal or that any question of law has been erroneously decided by it.

3. Resultantly, we find no reason to interfere with the impugned decision of the Tribunal.

In the result, this revision is dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

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