

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

RP.No. 946 of 2015 IN WA.1851/2012

AGAINST THE JUDGMENT IN WA 1851/2012 of HIGH COURT OF KERALA DATED 06-08-2015

REVIEW PETITIONER:

M/S.MAK AGRO COMMODITIES, TRADING COMPANY PVT.LTD,
PANAMPILLY NAGAR, KOCHI-36
REPRESENTED BY ITS MANAGING DIRECTOR, M.A.K. AZAD
S/O LATE T.MUHAMMED GHANI

BY ADVS.SRI.K.T.POULOSE (KORATTY)
SRI.C.JOSEPH ANTONY

RESPONDENTS:

1. THE COMMISSIONER OF COMMERCIAL TAXES
THIRUVANANTHAPARUAM-695 001
2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES
KOTTAYAM-686 001
3. INTELLIGENCE OFFICER (IB)
OFFICE OF THE INSPECTING ASSISTANTCOMMISSIONER (INTELLIGENCE)
COMMERCIAL TAXES, KOTTAYAM -686 001

R BY SR. GOVERNMENT PLEADER SRI.BOBBOY JOHN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 11-11-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE APPLICATION UNDER RIGHT TO INFORMATION ACT DATED 22.8.2015.

ANNEXURE B: TRUE COPY OF THE REPLY DATED 8.9.2015.

ANNEXURE C: TRUE COPY OF THE APPLICATION MADE BEFORE THE COMMERCIAL TAX OFFICER, COIMBATORE DATED 24.8.2015.

ANNEXURE D: TRUE COPY OF THE REPLY GIVEN BY THE COMMERCIAL TAX OFFICER, COIMBATORE DATED 23.9.2015.

ANNEXURE E: TRUE ENGLISH TRANSLATION OF ANNEXURE D.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

R.P.No.946 of 2015 in W.A.No.1851 of 2012

Dated this the 11th day of November, 2015

ORDER

Antony Dominic, J.

The appellant in the writ appeal has filed this review petition seeking review of the judgment dated 6th August 2015 whereby this appeal was dismissed. First contention raised is that the finding in paragraph 4 of the judgment that neither before the Intelligence Officer nor before the Revisional Authorities nor in the pleadings in the writ petition or appeal, has the appellant raised a contention that penalty was levied without considering its reply dated 23.12.2001, is factually incorrect. Reference was made to Ext.P5 to substantiate his plea. We do find that the reference is made to the reply dated 23.12.2001. However, Ext.P5 itself show that even in that document what the appellant has stated is a copy of the reply would be made available to the officer. There is nothing to show that such a document was in fact made available. Even apart from that, as found in paragraph 4 of the judgment itself it is the specific case of the respondents that the alleged reply dated 23.12.2001 was never received by them. It is also a fact that the appellant has not produced any documents evidencing that the reply was dispatched or that the same was served on the

respondents. No document in this behalf has been produced even along with this review petition. In such circumstances, this contention cannot be accepted to review the judgment.

2. The second contention raised that the factual foundation that the appellant has purchased goods from M/S Star Trading Corporation and sold the good to M/S Maida Trading Company, Kottayam is incorrect. According to the appellant, as is seen from Annexures A to E, no such addressees are available. However, as rightly pointed out by the learned Government Pleader, these documents do not prove that these concerns were not in existence during 1999-2000, the relevant assessment year. Secondly, we cannot also ignore the objection raised by the learned Government Pleader that there is no explanation whatsoever for the appellants failure to produce these documents, before the Departmental Authorities or the Revisional Authorities or before this Court when the proceedings were pending. In such circumstances, we are unable to place reliance on the documents now

produced and conclude that the judgment is vitiated for errors apparent on the face of it.

3. In the result, we are not satisfied that the appellant has made out a case for review of the judgment.

Review petition is dismissed accordingly.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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