IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

ST.Rev..No. 103 of 2011 ( )

ORDER IN TA 45/2010 of THE KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, ERNAKULAM DATED 30.04.2011

REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA REP. BY DEPUTY
COMMISSIONER (LAW), COMMERCIAL TAXES, ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI.LIJU STEPHEN

RESPONDENT/APPELLANT/ASSESSEE:

M/S BHARATH SHELL LTD.
3/65A, HYDROSE PALLY ROAD, WEST VENGOLA P.O
PERUMBAVOOR - 683 554. (CAUSE TITLE AMENDED AND THE NAME AND ADDRESS OF THE RESPONDENT IS CHANGED TO "M/S.SHELL INDIA MARKET PVT. LTD.
KOLUTHARA DISTRIBUTORS, ST.JOHN'S STORE HOUSE
PALARIVATTOM, THAMMANAM ROAD, ERNAKULAM
PIN - 682025"
AS PER ORDER DATED 06.12.2013 IN I.A.NO.3099/2013.

BY ADV. SMT.S.K.DEVI
BY ADV. SRI.SANTHOSH P.ABRAHAM

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 19-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ST.Rev..No. 103 of 2011

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A : TRUE COPY OF THE ASSESSMENT ORDER DATED 30.07.2007.

ANNEXURE B : TRUE COPY OF THE ORDER OF THE DEPUTY COMMISSIONER DATED 02.02.2009.

ANNEXURE C : TRUE COPY OF THE ORDER OF THE AIT & STAT DATED 30.04.2011 IN T.A. NO.45/2010.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

S.T.Revn No.103 of 2011

Dated this the 19th day of June, 2015

ORDER

Antony Dominic,J.

The revenue has filed this revision challenging the order passed by the Kerala Agricultural Income Tax & Sales Tax Appellate Tribunal, Additional Bench, Ernakulam in T.A.No.45 of 2010.

2. The said appeal was filed by the respondent/dealer under the KGST Act challenging the final assessment for the year 2004-2005 completed on best judgment basis. In the first appeal that was filed the assessment order was confirmed and in the further appeal that was filed before the Tribunal, the impugned order was passed setting aside the order of assessment and directing that fresh assessment be completed accepting the books of accounts of the assessee. It is this order of the Tribunal which is under challenge before us.

3. We heard the learned Government Pleader appearing for the revenue and the learned counsel appearing for the

respondents.

4. The very basis of the best judgment assessment is that the price of the lubricants, the products dealt with by the assessee, when brought from outside the State was declared as Rs.71.68 per litre, for the purpose of entry tax. Subsequently it was found that the sale price declared was only Rs.64.93 per litre. This made the assessing authority to initiate enquiry under Section 19(b) of the KGST Act which according to the learned Government Pleader was under Section 19(d) of the KGST Act.

5. Proceedings were completed and Annexure-A assessment order was passed accepting the sale price as Rs.71.68. An addition of 5% was also made. Addition of 5% was deleted by the first appellate authority and the entire assessment was set aside by the Tribunal.

6. Though the learned Government Pleader contended that when proceedings are initiated under Section 19(b), the burden to prove that the assessee did not receive the fair market price was entirely upon him in view of Section 12(2) of the KGST Act. According to the Government Pleader when this burden was not discharged by the assessee, the assessment accepting the price declared for the purpose of entry tax was rightly accepted by the

assessing officer for completing the assessment on best judgment basis.

7. Section 19(b) of the KGST Act, provided for assessment in case of under valuation and as per this provision if the assessing authority is satisfied that a dealer has, with a view to evade payment of tax, shown in his accounts sale/purchase of any goods, at prices lower than the prevailing market price of such goods it may estimate the value of the goods on the basis of the prevailing market price and assess or re-assess the dealer to the best of his judgment after making such enquiry as it considers necessary.

8. A reading of this provision shows that the assessing authority should be satisfied that the dealer has shown in his books of accounts sale or purchase at prices lower than the prevailing market price with a view to evade payment of tax. Though these are the elementary requirements of this section, in so far as this case is concerned, the conclusion of the assessing authority is that though the dealer had declared a higher price for the purpose of entry tax, the dealer has sold the goods at a lower price and that the said price is lower than the comparable market price of the products marketed by other petroleum

companies like IOC, HPC and BPCL. While it is a fact that the dealer had sold the goods at a price lower than what they declared for the purpose of entry tax, no material whatsoever has been unearthed to show that such lower price shown in the books of accounts was for the purpose of evading tax.

9. It is true that under Section 12(2), it is the burden of the dealer to prove that he did not receive fair market price on the transaction. The term fair market price is defined in Section 2 (11)(a) as the sale price for the sale of the goods fixed by the assessing authority. Therefore, it is for the dealer to prove that the sale price that is fixed by the assessing authority was not realised by him. In order to discharge the burden cast on him by Section 12(2), this necessarily requires the assessing authority to put the dealer on notice, at least tentatively, the fair market price which he proposes to fix in order to enable the dealer to disprove that the claim as is required under Section 12(2). In so far this case is concerned, the notice issued by the assessing authority, extracted in the Annexure-A assessment order, does not show the aforesaid requirement has been complied with. Therefore, we are not in a position to find fault with the dealer on the basis that he did not discharge the burden as provided

under Section 12(2).

10. The sum and substance of the above is that we fully concur with the view taken by the Tribunal.

Revision fails and it is accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. to Judge

smv