IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

W.A.No. 1851 of 2012 () IN WP(C).12352/2005

AGAINST THE JUDGMENT IN W.P.(C) NO.12352/2005 of HIGH COURT OF KERALA DATED 22-08-2012.

APPELLANT/PETITIONER :

M/S. MAK AGRO COMMODITIES
TRADING COMPANY PVT. LTD.,
PANAMPILLY NAGAR, KOCHI-36,
REPRESENTED BY ITS MANAGING DIRECTOR,
M.A.K. AZAD, AGED 49, S/O. LATE T.MUHAMMED GHANI.

BY ADVS.SRI.RAJU JOSEPH (SR.)
SRI.C.N.MIDHUN

RESPONDENT(S)/RESPONDENTS :
----

1. THE COMMISSIONER OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM - 695 001.

2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES,
   KOTTAYAM - 686 001.

3. INTELLIGENCE OFFICER (IB),
   OFFICE OF INSPECTING ASSISTANT COMMISSIONER
   (INTELLIGENCE), COMMERCIAL TAXES, KOTTAYAM - 686 001.

BY SENIOR GOVERNMENT PLEADER, SRI. LIJU STEPHEN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.
--
W.A.No.1851 of 2012
--
Dated this the 6th day of August, 2015

JUDGMENT

Antony Dominic, J.

Appellant filed W.P.(C) No.12352 of 2005 and the writ petition was dismissed by the learned Single Judge. It is aggrieved by this judgment, this appeal is filed.

2. We heard the learned Senior Counsel appearing for the appellant and the learned Senior Government Pleader appearing for the Respondents.

3. Briefly stated the facts of the case are as follows:

There was an inspection in the premises of the appellant on 02.02.2001. During the course of the inspection, in so far as it is relevant for the purpose of this judgment, records were recovered which show sales turnover of Rs.4,40,74,784/- for the assessment year 1999-2000. Further proceedings initiated resulted in penalty notice issued to the appellant. On receipt of the penalty notice, reply dated 22.12.2001 was submitted. It is the case of the appellant that subsequently realizing that the reply dated 22.12.2001 was submitted in relation to another firm, Ext.P2 reply dated 23.12.2001 was submitted by the appellant. After completing all procedural formalities, Ext.P11 order was passed levying penalty on the appellant under Sec.45A of the K.G.S.T Act. Appellant challenged Ext.P11 order by filing revision before the Deputy Commissioner. By Ext.P7 order, the revision was rejected. The appellant filed a second revision before the Commissioner and that revision was also rejected by Ext.P10 order. It was challenging these proceedings, the writ petition was filed, which came to be dismissed.

4. The first contention raised by the learned Senior Counsel for the appellant is that the impugned orders were passed referring to the reply dated 22.12.2001 and without referring to Ext.P2 reply dated 23.12.2001. In so far as this contention of the appellant is concerned, it is the definite case of the learned Senior Government Pleader that the reply dated 23.12.2001 was not received by the Respondents. Having considered the rival submission made, what we find is that apart from making assertion before us that Ext.P2 reply was sent to the penalty notice, the appellant has not produced any

document evidencing that Ext.P2 was either despatched by the appellant or served on the Respondents. It is also to be seen 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 the penalty was levied without considering its reply dated 23.12.2001. In such circumstances, we cannot permit the appellant to contend before us for the first time that the penalty levied is illegal for non-consideration of Ext.P2 reply dated 23.12.2001.

5. The appellant also contended that the whole proceedings were initiated and penalty was levied on the basis that during the assessment year 1999-2000, the Company had a sales turnover of Rs.4,40,74,784/-. It is contended that this estimation had been made on the basis of the original sales bills that were recovered during the inspection held on 02.02.2001. According to the learned Senior Counsel, the Department did not prove that either the appellant had purchased the goods from Coimbatore as claimed or that the goods have passed through the Check Post. He also argued that there is no proof that the appellant had actually sold any

goods. First of all, though the records recovered on inspection proved the sales turnover, there is no finding anywhere that recovered records included the original sale bills. Though there was such a finding in Ext.P12 order passed by the Deputy Commissioner, while disposing of the appeal filed by the appellant against the assessment order, it is seen from Annexure-B order of the Tribunal that in the appeal filed by the Department, Ext.P12 order was set aside and assessment was remitted to the Assessing Officer with a direction to decide the matter afresh untrammelled by the observations made by the Deputy Commissioner in Ext.P12 order. Therefore, the claim made by the appellant that the original sale bills were recovered is a new and unsubstantiated one.

6. The case that the Respondents did not prove that there was sales turnover as found by them also cannot be accepted. According to us, sales invoices and other documents recovered from appellant's own premises indicated sales turnover as found in the impugned order. When such documents are recovered from the appellant's own premises and if the appellant has any dispute about the accuracy of the same, it was for the appellant to have adduced evidence and

proved its case. Therefore, we cannot invalidate the proceedings on the basis that the Department did not prove the sales turnover.

7. Reading of the penalty order and the orders confirming the same show that the conclusions therein are based on the records available and the reply dated 22.12.2001, admittedly filed by the appellant. These orders were passed after affording sufficient opportunity to the appellant. In other words, the findings in the orders are consistent with the materials available and the orders were passed after complying with the principles of natural justice. In such circumstances, we do not find anything illegal in the impugned orders to justify interference in the judgment of the learned Single Judge, upholding those orders.

In the result, we do not find any substance in the appeal. Appeal fails and it is accordingly dismissed.

Sd/-

ANTONY DOMINIC
JUDGE
Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-