IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WA.No. 2267 of 2008 (B) IN OP.37819/2002

JUDGMENT IN OP 37819/2002 of HIGH COURT OF KERALA DATED 25-01-2008

APPELLANTS/RESPONDENTS IN THE O.P:
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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT
   OF KERALA, COMMERCIAL TAXES, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES,
   KATTAPPANA, IDUKKI DISTRICT.

3. THE INTELLIGENCE OFFICER, COMMERCIAL TAXES,
   KATTAPPANA, IDUKKI DISTRICT.

BY SENIOR GOVERNMENT PLEADER SRI. LIJU V. STEPHEN

RESPONDENT/PETITIONER IN THE O.P.:

S.RAJARATINAM, PROPRIETOR OF M/S. SUNDARI SPICES,
57/CW-2, ULAGATHEWAR STREET, CUMBUM, TAMILNADU

R1 BY ADV. SRI.JOHN JOSEPH (ROY)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

W.A.No.2267 of 2008
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Dated this the 20th day of May, 2015

JUDGMENT

Antony Dominic, J.

The respondents in O.P.No.37819/2002 filed this appeal against the judgment of the learned Single Judge, directing them to refund 50% of the net sale proceeds to the respondent.

2. We heard the learned Government Pleader appearing for the appellants. Although notice to the respondent was published in the Madurai Edition of the Indian Express daily, he has not entered appearance through counsel and therefore we did not have the benefit of hearing the counsel on his behalf.

3. In the Original Petition, the respondent challenged Ext.P2 order by which the 3rd appellant declined the claim of the respondent to refund the value of the pepper seized on 22.03.2000 and sold thereafter under Court orders. In the judgment under appeal, the learned Single Judge held that the

case was covered by Sec.29A(14) of the K.G.S.T Act. Thereafter, taking note of the fact that the respondent was the only claimant for refund, and holding that through preponderance of probabilities he had established the ownership over the goods, the learned Single Judge ordered that on equitable grounds, 50% of the net sale proceeds, excluding tax, shall be refunded to the respondent. It is this judgment which is under appeal before us.

4. The facts of the case show that 1680 Kgs. of black pepper was attempted to be smuggled from Kerala to Tamil Nadu and that on detection of the attempt, the goods were abandoned by the carriers. It was in the consequential proceedings that in response to an advertisement issued by the appellants, the respondent appeared and claimed ownership over the goods. Initially he claimed that he purchased the pepper from Tamil Nadu and that the seizure was also from Tamil Nadu. The appellant therefore contended that the authorities under the K.G.S.T Act did not have any jurisdiction to adjudicate the matter. However, he later produced the documents evidencing purchase of the goods from Kerala itself and sought to establish the ownership over

the goods. It was taking note of this contradictory stand and the absence of other dependable documents to prove ownership, Ext.P2, an order under Sec.29A(14) of the K.G.S.T Act was passed. In the judgment under appeal itself the learned Single Judge upheld the order under Sec.29A(14) of the K.G.S.T Act. Once the applicability of Sec.29A(14) of the K.G.S.T Act is upheld, the learned Single Judge could not have thereafter directed that any portion of sale proceeds deposited should be released to the claimant, the respondent herein. Therefore, that part of the judgment requiring disbursement of 50% of the sale proceeds is contradictory to the learned Single Judge's own finding in the judgment.

5. Even otherwise, in the judgement under appeal, it is seen that the claim of the respondent was contradictory, in as much as initially he claimed procurement of the goods from Tamil Nadu whereas, the documents produced by him itself showed that the procurement was from Kerala. Apart from that, he did not produce any documents proving his ownership of the goods. In such circumstances, the learned Single Judge could not have resorted to preponderance of probabilities to accept the claim of the ownership raised by the respondent

over the goods in question and ordered disbursement of 50% of the net sale proceeds to him.

For the aforesaid reasons, we are unable to sustain the judgment under appeal. The judgment is set aside and the appeal is allowed as above.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI .P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-