IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

ST.Rev..No. 28 of 2015

AGAINST THE ORDER IN TA 30/2010 of S.T.A.T.ADDLBENCH,TVM. DATED 12-01-2015

PETITIONER/APPELLANT/ASSESSEE:

MR.G.SUDHEESH KUMAR
HOTEL SEA FACE, KOVALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.K.B.PRADEEP

RESPONDENT/RESPONDENT:

STATE OF KERALA
REPRESENTED BY ITS FINANCE SECRETARY
GOVT. OF KERALA, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

R BY GOVERNMENT PLEADER SRI.LIJU STEPHEN

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 17-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ST.Rev..No. 28 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I: TRUE COPY OF THE ORDER OF ASSESSMENT DATED 29.12.2008.

ANNEXURE 2: THE ORDER OF THE DEPUTY COMMISSIONER (APPEALS), THIRUVANANTHAPURAM DATED 18.11.2009.

ANNEXURE 3: TRUE COPY OF THE TRIBUNALS ORDER IN T.A.NO.30/2010 DATED 12.1.2015.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

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S.T.Rev.No.28 of 2015

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Dated this the 17th day of June, 2015

JUDGMENT

<u>Antony Dominic, J.</u>

This revision is filed by the assessee, who is aggrieved by Annexure 3 order passed by the Kerala Value Added Tax Appellate Tribunal, Additional Bench, Thiruvananthapuram dismissing T.A.30/10 filed by them. The assessee, a licensee under the Foreign Liquor Rules, is a dealer in liquor and other goods. For the assessment year 2005-2006, the assessee had conceded profit at the rate of 18.66%. The assessing officer estimated the profit at 219.32% and on that basis penalty was levied on the assessee. In the appeal filed by the assessee, the first appellate authority reduced the profit to 55%. This order was challenged before the Tribunal in appeal filed by the Revenue and the assessee. The appeal filed by the Revenue was dismissed on the ground of limitation and the appeal filed by the assessee was dismissed on merits. It is in this background, the assessee has filed this revision.

2. According to the counsel for the petitioner, even though the assessee raised the issue regarding the correctness of the quantification of

penalty before the first appellate authority, the same was not considered. Such contention is factually correct. From paragraph 8 of the Tribunal's order, we find that the said issue has been specifically dealt with by the Tribunal. In such circumstances, this contention raised by the counsel for the revision petitioner does not have any merit.

3. As we have already stated while profit was initially estimated at 219.32%, the first appellate authority has reduced the same to 55%. Such estimation by the first appellate authority which was upheld by the Tribunal is a reasonable one and does not call for any interference, much less in a revision.

Revision fails and it is accordingly dismissed.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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