IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

ST.Rev..No. 35 of 2015 ()

AGAINST THE ORDER IN TA 48/2011 of KERALA VALUE ADDED TAX/AGRL. INCOME TAX & SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, THIRUVANANTHAPURAM DATED 07-02-2015

PETITIONER/REVISION PETITIONER:

JAISON G OOMMEN
ST.MARY'S CASHEW FACTORY, PUTHOOR.P.O.,
KOTTARAKKARA, PIN-691 507.

BY ADVS.SRI.V.V.GEORGEKUTTY
SRI.AJI V.DEV

RESPONDENT:

STATE OF KERALA
REP. BY SECRETARY, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY SENIOR GOVERNMENT PLEADER SRI. LIJU STEPHEN

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 03-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ST.Rev..No. 35 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE - A1 : TRUE COPY OF THE USED DELIVERY NOTE NO.409252 DATED 22.3.05 OF THE PETITIONER.

ANNEXURE - A2 : TRUE COPY OF THE O.R. 728 NOTICE DATED 23.3.05 ISSUED BY THE INTELLIGENCE SQUAD, ALAPPUZHA.

ANNEXURE - B : COPY OF THE PENALTY ORDER NO.728 DATED 24.11.2005 OF THE INTELLIGENCE OFFICER, ALAPPUZHA.

ANNEXURE - C : COPY OF THE ASSESSMENT ORDER FOR 2004-05 DATED 22-3-2010, FINALISED BY THE FAST TRACK ASSESSMENT TEAM.

ANNEXURE - D : ORIGINAL COPY OF THE ORDER IN T.A. NO.48/2011 DATED 7.2.2015 OF THE STAT, THIRUVANANTHAPURAM.

ANNEXURE - E : COPY OF THE JUDGMENT IN ESKEYEF LTD. VS. STATE OF KERALA, REPORTED IN 107 S.T.C.230.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

S.T.Rev No.35 of 2015

Dated this the 3rd day of August, 2015

ORDER

Shaji P. Chaly, J.

This revision is preferred against the order of the Kerala Value Added Tax/Agrl. Income Tax & Sales Tax Appellate Tribunal, Additional Bench, Thiruvananthapuram in T.A. No.48 of 2011 dated 07.02.2015 for the assessment year 2004-2005, by which order the Tribunal has affirmed the order of the First Appellate Authority.

2. The brief facts leading to the case are as follows:

3. Appellant, a dealer in cashew who was subjected to a best judgment assessment on the ground that irregularities were detected at the time of inspection which are referred to as defect Nos. I to V in the order of assessment. Irregularities were found at the time of the inspection of the factory as well as during vehicle checking. Apart from adding the suppressed turnover of cashew kernels, further addition of three times was also made. Corresponding addition was also made towards suppression of

raw nuts.

4. Order passed by the Assessing Authority was confirmed by the First Appellate Authority which was taken in appeal before the learned Tribunal. Learned Tribunal affirmed the order passed by the First Appellate Authority, but reduced the tax imposed to two times from three times imposed by the Assessing Authority. Tribunal further directed the Assessing Authority to re-compute the interest in the light of the modification of the order passed by the Tribunal.

5. We have considered the pleadings raised in this revision memorandum and the rival submissions made by the counsel for the revision petitioner as well as the learned Senior Government Pleader. We find that the learned Tribunal has considered the entire questions of law as well as the facts raised by the assessee before the Tribunal and has found that the assessee has failed to produce relevant documents in order to substantiate the case put forth by him that there was no suppression of the quantity of cashew transported by the assessee.

6. We find from the records and the order of the Tribunal that the penalty imposed against the assessee consequent to the

suppression of the quantity of the materials has become final. The First Appellate Authority as well as the Tribunal have found that there a pattern of suppression was established. It was also evident from the defects pointed out in the assessment order that defect Nos.I to V were not properly explained by the assessee. Moreover, the Tribunal has found that at the time of inspection of the business place, the appellant had admitted the irregularities and got the offence compounded departmentally and further that before the Fast Track Assessment Team, the appellant's only plea was that the addition of three times was excessive and that the addition may be reduced to an amount equal to the suppression detected. In that circumstances, the Tribunal has considered only the aspect regarding the reasonableness of the estimate. In that view of the matter also the revision petitioner was not entitled to put forth any other contention in the revision proceedings. We also do not find any substantial questions of law to be considered in this revision.

7. In that view of the factual findings of the learned Tribunal and taking into account the law involved, we do not find any reason to interfere with the order passed by the Tribunal

invoking our revisional jurisdiction conferred under Section 41 of the KVAT Act.

Revision fails and it is accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

smv P.A. To Judge