IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

ST.Rev.No. 41 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN TA 64/2009 OF SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM DATED 14-08-2009

PETITIONER(S)/APPELLANT/ASSESSEE:
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M/S.HIBATHULLA ENTERPRISES,
PETTA, THRIPPUNITHURA, PRESENTLY AT DOOR NO.10-25/1088,
J.M.ROAD, BUNDER, MANGALOOR 575 001.
REPRESENTED BY ITS PARTNER MR.MUHAMMED HARIS.

BY ADV. SRI.G.KRISHNAKUMAR

RESPONDENT(S)/RESPONDENT/STATE:
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STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY TO TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R BY SMT.SOBHA ANNAMMA EAPEN, GOVERNMENT PLEADER

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 01-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

DG

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A: COPY OF THE REVISED HIGHSEAS AGREEMENT DATED 6.11.2002 EXECUTED BETWEEN M/S.S.A.ENTERPRISES AND THE PETITIONER.

ANNEXURE B: COPY OF THE COMBINED TRANSPORT BILL OF LADING ISSUED BY MITSUI O.S.K. LINE LTD.

ANNEXURE C: COPY OF THE BILL OF ENTRY FOR HOME COMSUMPTION.

ANNEXURE D: COPY OF THE BILL DATED 19.7.2002 ISSUED BY THE NATIONAL CLEARING AND SHIPPING AGENCY.

ANNEXURE E: COPY OF THE SURVEY REPORT DATED 23.9.2002 ISSUED BY M/S.J.B.BODA SURVEYORS PVT. LTD.

ANNEXURE F: COPY OF THE DD SLIPS DATED 15.7.2002, 26.7.2002, 14.8.2002, 31.7.2002.

ANNEXURE G: COPY OF THE LETTER DATED 14.10.2002 ISSUED BY THE PETITIONER TO M/S.S.A.ENTERPRISES.

ANNEXURE H: COPY OF THE REPLY DATED 14.10.2002 OF M/S.S.A.ENTERPRISE.

ANNEXURE I: COPY OF THE REPORT DATED 28.10.2002 OF M/S.GEOCHEM LABORATORIES (P) LTD.

ANNEXURE J: COPY OF THE EXEMPTION NOTIFICATION OF CUSTOMS TARIFFS SCHEDULE DATED 1.3.2002.

ANNEXURE K: COPY OF THE ORDER DATED 25.2.2005 ISSUED BY THE STO, THRIPPUNITHURA.

RESPONDENT'S EXHIBITS - NIL

//TRUE COPY//

P.A TO JUDGE

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

ST Rev.No.41 of 2015

Dated this the 1st day of December, 2015

O R D E R

Thottathil B.Radhakrishnan, J.

1. We have heard the learned counsel for the petitioner and the learned senior Government Pleader in this Sales Tax Revision filed under Section 41 of the KGST Act with an application seeking condonation of delay of 2170 days in filing the revision.

2. The delay in institution of this revision is attributed to the time taken to prosecute an application for review which was filed before the Tribunal.

3. We would first proceed to consider as to whether there is any merit warranting admission of this revision in terms of Section 41 of the KGST Act.

4. Reverting to the pre-assessment notice, the first appellate order and the impugned order of the Tribunal, we see that the

disputes raised are entirely in the realm of facts. The petitioner was engaged in the business of import and export of goods at Mangalore in the State of Karnataka. He got registered under the KGST Act as a casual trader. During the year 2002-2003, he had purchased imported raw cashew nuts from a person who had entered into a contract from India for import from an African Port, while the goods were in the high seas. Value of the imported raw cashew nuts, going by the bill of entry, was ₹39,47,492.56. Those nuts were sold interstate as well as within the State for a total conceded turn over of ₹ 22,43,625/-.

5. The assessing authority, holding that the sale value conceded was much below the acceptable cost price, resorted to best of judgment assessment. A pre-assessment notice was issued clearly pointing out the different heads under which the assessment would follow. The assessee did not respond. The best of judgment assessment followed. The assessee carried it in an appeal. The appellate authority, after perusing the materials which were then furnished before it, affirmed the assessment order. The Tribunal did not find its way to

interfere with it.

6. We have considered the submissions on behalf of the respondents and have considered the Tribunal's order. The Tribunal rightly focused on the fundamental question that arose for decision; that is to say, as to whether the authorities below were justified rejecting in the conceded sale value of imported raw cashew nuts and in estimating the sale value of raw nuts based on import documents. Assimilating the various factors and material evidence including the bill of entry, the Tribunal affirmed the decision of the subordinate authorities, confirming the findings of the assessing authority and the Appellate Assistant Commissioner after quoting the contents of those orders to the extent they were relevant. Tribunal held that both the assessing authority and the First Appellate Authority had stated reasons as to why the assessee's explanation could not be accepted. Apart from projecting what is called as the 'revised high seas agreement' stated to have been entered into between the assessee and his seller, no evidence was tendered before any of the statutory authorities, including the Tribunal, to substantiate the claim on the

damaged stock. We say this reiterating the view of the Tribunal because what was offered as surveyors report of loss was not acceptable to the statutory authorities for the different reasons which they have stated in the impugned orders. To crown all this, is the fact that the goods were stated to be lying in the Cochin Port for a period of four months. The value of the goods as declared in the bill of entry for home consumption was ₹39,47,492.56. The bill of entry was presented only on 16.09.2002. The Tribunal noted that there is no mention in the bill of entry that the goods were damaged. We may also record that the learned Senior Government Pleader points out that the container was destuffed even earlier.

7. In the aforesaid factual matrix and having regard to the findings rendered by the assessing authority and first appellate authority as also the learned Tribunal, we are of the view that it cannot be held that the Appellate Tribunal had either decided erroneously or had failed to decide any question of law arising for decision in this case. The plea raised through this revision, therefore, fails.

8. Taking into consideration the pendency of the application seeking review of the original order of the Tribunal, we are of the view that the assessee has shown fairly reasonable reasons to be treated as sufficient causes to condone the delay in the institution of this revision.

In the result,

1. C.M.Appl.No.864 of 2015 is allowed.
2. Sales Tax Revision is dismissed in limine.

Sd/-

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-

(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

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