

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 26TH JUNE 2008 / 5TH ASHADHA 1930

S.T.Rev..No. 196 of 2005

ORDER DATED 14.9.2004 IN T.A.40/2004 OF THE KERALA SALES TAX  
APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE.

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PETITIONER/APPELLANT:

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C.K.ASHARAF,  
PROPRIETOR,  
SUPER TRADERS,  
SREEKANDAPURAM,  
KANNUR DISTRICT.

BY ADV. SRI.V.P.SUKUMAR  
SRI.JAIRAM.V.MENON

RESPONDENT/RESPONDENT:

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STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY,  
SECRETARIAT,  
THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION  
ON 26/06/2008, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**H.L.DATTU, C.J. & A.K.BASHEER, J.**

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**S.T.Rev.No.196 of 2005**  
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Dated, this the 26<sup>th</sup> day of June, 2008

**ORDER**

**H.L.Dattu, C.J.**

Petitioner is a dealer in rice and other provisions. He is registered under the provisions of the Kerala General Sales Tax Act, 1963 ('the KGST Act' for short) and the Central Sales Tax Act, 1956 ('the CST Act' for short).

2. For the assessment year 1998-99, the assessee had filed his annual returns conceding a particular turnover as total and taxable turnover. The assessing authority has rejected the annual returns and also the books of accounts produced by the dealer, on the ground that the Sales Tax Officer had imposed a penalty against the petitioner for non-filing of the monthly returns and also had levied penalty on the ground that there is unaccounted purchases and sales of goods.

3. After rejection of the books of accounts, the assessing authority by way of best judgment assessment has made certain additions to both purchases and sales of the dealer. Aggrieved by the best judgment assessment so passed, the assessee had filed appeal before the first

appellate authority, who in turn has modified the orders passed by the assessing authority and has given some relief to the assessee.

4. The order passed by the first appellate authority had been questioned by the assessee by way of second appeal before the Tribunal. Aggrieved by the orders passed by the Tribunal in rejecting the assessee's appeal, the assessee is before us in this revision petition.

5. The assessee has framed the following questions of law for our consideration and decision. They are as under:

*“1. The Tribunal found that defect No.2 in the assessment order does not establish any under valuation in the sale bills issued by the assessee. After having held so, is the Tribunal justified in law in sustaining two times estimated sale value of the purchase in question to the conceded turnover?*

*2. Defect No.3 pointed out in the assessment order was that the petitioner transported goods using invoice in which the registration number noted was that of M/s.Sakthi Trading Company. M/s.Sakthi Trading Company was the name of the petitioner's business before it was changed as M/s.Super Traders. Registration under the KGST Act is issued in the individual name of the petitioner irrespective of the trade name used by him. Therefore the registration number of M/s.Sakthi Trading Company and M/s.Super Traders is one and the same as the registration is issued to*

*C.K.Asharaf, who is the proprietor of the business. Therefore is the Tribunal justified in law in holding that the petitioner transported the goods using the registration number of another dealer and sustaining the addition made to the conceded turnover by the assessing authority for that reason?*

*3. As regards defect No.5 relating to imposition of penalty of Rs.1,25,000.00 by the Intelligence Officer (IB), the Tribunal found that pursuant to the remand order passed by the Deputy Commissioner in Annexure II revisional order, no fresh orders was passed by the Intelligence Officer. In fact the Intelligence Officer had passed Annexure IV revised order dated 5.7.2004 reducing the penalty to Rs.24,502.00 from Rs.1,25,000.00 passed earlier. The said revised order passed by the Intelligence Officer was again set aside by the Deputy Commissioner in Annexure VI revisional order. That being the factual position, is the Tribunal justified in law in sustaining addition of 3 times of the suppression estimated by the assessing authority to the conceded turnover.”*

6. At the time of hearing of the revision petition, Sri.V.P.Sukumar, the learned counsel appearing for the assessee, would submit, that, he is primarily aggrieved by defect Nos.2 and 5 pointed out by the assessing authority in the pre-assessment notice and the confirmation of the proposal made therein by the assessing authority.

7. Defect No.2 pointed out in the pre-assessment notice pertains to imposition of penalty of Rs.3780/- by the Intelligence Officer, Kasaragod in exercise of his powers under Section 29A of the KGST Act for under valuation of the purchase of groundnut cake. The Intelligence Officer had found that the value shown in Bill No.78 dated 19.7.1998 issued by M/s.Narasimhaswamy, Marketers, Karnataka is Rs.4.50 per kg. whereas the prevailing market rate is Rs.7.50 per kg. The assessing authority in his orders of assessment had estimated the suppression of sales for this defect at Rs.54,340/- and added four times of the above being the probable sales suppression.

8. The Tribunal in the appeal filed by the assessee has found that the addition so made by the assessing authority is excessive and accordingly has reduced it to two times of the estimated value.

9. Sri.V.P.Sukumar, learned counsel appearing for the revision petitioner would submit that it is not in the hands of the assessee with regard to the purchase bill issued by the seller of the commodity. If anybody has committed any offence it is only the seller of the groundnut cake who is located in Karnataka and not the purchaser who is within the State of Kerala.

10. In our opinion, the submission of the learned counsel is difficult to accept. Dealers under the Act can arrange their affairs in such

a way that their tax liability can be reduced. In the instant case, when the market value of the groundnut cake was Rs.7.50 per kg., in the purchase bill that was noticed by the Intelligence Officer it was shown only as Rs.4.50 per kg. That only means that the bill that was produced by the assessee before the Intelligence Officer of the Department was defective and secondly the seller and the purchaser had arranged the affairs in such a manner that their tax liability could be reduced. Keeping this aspect of the matter in view, in our opinion, the assessing authority had made certain additions to the taxable turnover of the dealer and this estimation on the suppression is reduced by the Tribunal. In a petition filed under Section 41 of the KGST Act, normally this Court would not interfere with the orders of best judgment assessment passed by the assessing authority and modified by the Tribunal, unless those orders are erroneous in law.

11. In the instant case, as we have already stated, the assessing authority for the purpose of making the estimation of probable omission and suppression in the books of accounts was based on the report of the Intelligence Officer. It is not the case of the assessee either before the assessing authority or before us, that the actual value of purchase of groundnut cake at the relevant time was only Rs.4.50 per kg. and not Rs.7.50 per kg. which was the prevailing market rate at the relevant point of time. In that view of the matter we cannot say that the guess work made

by the assessing authority does not have any rational basis whatsoever.

12. Now we come to defect No.5 that was pointed out by the assessing authority in the pre-assessment notice issued by him.

13. The Sales Tax Officer in exercise of his powers under Section 45A(1)(b) of the KGST Act had imposed penalty of Rs.1,25,000/- for the offence of failure to maintain true and complete accounts for effecting the purchase of groundnut oil cake worth Rs.16,04,700/-. In the orders of assessment passed, the assessing authority had found that five bills amounting to Rs.2,35,600/- were not seen accounted. Accordingly it added four times of the estimated value of sale of Rs.2,70,940/- towards the probable omission and suppression and accordingly added a sum of Rs.10,83,760/- to the conceded turnover. The estimation made by the assessing authority has been found to be excessive and therefore, the Tribunal has reduced it to three times of the estimated sale value of Rs.2,70,940/-.

14. In the instant case, though the Sales Tax Officer while imposing a penalty of Rs.1,25,000/- had observed in his order that the assessee is not maintaining true and complete accounts of the purchase of groundnut oil cake worth Rs.16,04,700/-, the assessing authority after going through the bills produced by the assessee had not accepted the version of the Sales Tax Officer who had imposed the penalty under

Section 45A(1)(b) of the KGST Act. Since the assessee had not accounted a sum of Rs.2,35,600/- which would reflect the purchase of groundnut oil cake in the five bills, an estimation is made by the assessing authority not only by adding the gross profit but also the probable omission and suppression of sales. Even this estimation is also modified by the Tribunal again on the ground that the addition so made is excessive. In a revision filed under Section 41 of the KGST Act this Court would not interfere with the orders passed by the Tribunal, unless the Tribunal has either decided erroneously or failed to decide any question of law. In that view of the matter we cannot take any exception to the orders passed by the appellate Tribunal.

15. In view of the above discussion, the questions of law raised by the assessee requires to be answered against the assessee and in favour of the revenue. Accordingly we reject the revision petition.

16. I.A.No.1061 of 2005 also stands rejected.

Ordered accordingly.

**(H.L.DATTU)**  
**CHIEF JUSTICE**

**(A.K.BASHEER)**  
**JUDGE**