

(2017) 05 KL CK 0016

High Court Of Kerala

Case No: 231 of 2017 () IN OT Rev 174 of 2016

M/S.NAAZ AND COMPANY
KOTTACHERRY,

APPELLANT

Vs

THE STATE OF KERALA

RESPONDENT

Date of Decision: May 23, 2017

Acts Referred:

- Kerala Value Added Tax Act, 2003, Section 11(3), Section 11(3), Section 2(li), Section 2(li)

Hon'ble Judges: P.N.Ravindran, Devan Ramachandran

Bench: DIVISION BENCH

Advocate: C.K.GOVINDAN, N.MURALEEDHARAN NAIR, ARJUN S.RAJ

Final Decision: Dismissed

Judgement

1. The order sought to be reviewed by the petitioner was delivered by this court on 28.10.2016 in O.T.R.No.174 of 2016, noticing the specific assertions of the parties and on an assessment and evaluation of all the factors and pleadings on record. This Court had noticed specifically that the dealer had concededly sold the goods at a lower price than at which it was purchased by them and that the business was at a loss which would warrant, therefore, a question only as to whether the Tribunal had considered and applied the mandate in Explanation VII to Section 2(li) of the Kerala Value Added Tax Act.

2. This evaluation was done in the background of the dealer's assertion that he had received amounts from the suppliers subsequent to the purchase. The petitioner had urged that the amounts that he had received as "discount" are incentive of the quantum of goods sold. This court had concluded, after a thorough evaluation of the materials on record, that the findings entered into by the first appellate authority was without any evidence and without consideration of the materials on record in support of such claim. This court, therefore, found that the Tribunal had

correctly assessed the situation and had declined the claim of the petitioner.

3. The petitioner has preferred this review petition singularly on the ground that this court had not noticed the ratio of another Bench decision of this court in *Priya Agencies v. Commercial Tax Officer* {(2008) 14 VST 293}. We do not understand on what basis this assertion has been made by the petitioner. We say this because this court has specifically adverted to the position that was declared by the Bench in the judgment referred to above and this court had found specifically that even though the petitioner had attempted to obtain the benefit of the proviso to section 11(3) of the Act, on the ground that he had received the amounts as reimbursement of the expenses incurred by him, based on the pleadings and the submissions on record, such contention would have to be supported by clear and cogent evidence and materials that the dealer had suffered the expenses which alone were being reimbursed.

4. In the case at hand, since there was nothing on record to show this and since there was concededly nothing to show that the petitioner had suffered any expenses or that the amounts paid by the supplier were towards reimbursement of expenses, this court had declined relief to the petitioner.

On a conspectus of what we have recorded above and taking into account of the assertions and materials on record, we are of the specific and definite view that there is no cause shown for review of the judgment impugned in this review petition. The review petition is therefore dismissed.