

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 22ND DAY OF MARCH 2022 / 1ST CHAITHRA, 1944

OT.REV NO. 135 OF 2019

TAVAT 260/2017 OF S.T.A.TRIBUNAL, ADDITIONAL BENCH, KZD.

REVISION PETITIONER/S:

THE STATE OF KERALA
REPRESENTED BY THE DEPUTY COMMISSIONER OF STATE
TAX(LAW) DEPARTMENT OF KERALA STATE GOODS AND
SERVICE TAX, ERNAKULAM.
BY SR.GP.V K SHAMSUDHEEN

RESPONDENT/S:

RASEENA.K.K
M/S.FIDHA TRADING, KAKKAD, KANNUR DISTRICT-670005
BY ADVS.
SRI.K.M.FIROZ
SMT.M.SHAJNA

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR
ADMISSION ON 22.03.2022, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

**S.V.BHATTI
& BASANT BALAJI, JJ.**

O.T.REV NO. 135 OF 2019

ORDER

(Dated this the 22nd day of March 2022)

Basant Balaji J.,

This revision is filed by the State of Kerala aggrieved by the order dated 5.3.2019 in T.A.(VAT) No.260 of 2017 on the files of the Kerala Value Added Tax/Agricultural Income Tax & Sales Tax Appellate Tribunal, Additional Bench, Kozhikode.

2. The respondent is a dealer registered under the KVAT Act. On 20.2.2014, the assessee through a letter informed that she has intended to close the business with effect from 31.12.2013. Along with the letter, registration certificate was also enclosed. The reason stated for closing of the business was that she has entered into a new partnership firm under the name and style 'Fidha Trading'

with the same door number. Acting on the same, the application was allowed and the registration was cancelled with effect from 31.12.2013.

3. The investigation branch of the Commercial Taxes department, Kannur summoned the books of accounts from the assessee for the year 2013-14 and on verification of the same, it was found that though the registration was cancelled with effect from 31.1.2014, the business was continued by her business till 26.2.2014 and she did not file monthly return for the month of January 2014 upto 26.2.2014. This was an intention to evade payment of tax. The Intelligence officer, thereafter, took up the matter and by Annex.A1 order imposed a penalty under Sections 67(1) (b) and (d) of the KVAT Act 2003. The assessee challenged the same before the Deputy Commissioner, Commercial Tax, Kannur. The first Appellate Authority confirmed the finding in respect of the claim of input tax with effect from 31.1.2014 to 26.2.2014 as not allowable, but set aside the order of penalty and remitted it back to

the Intelligence Officer for fresh disposal. Still aggrieved by the same, the assessee filed appeal before the Tribunal.

4. The Tribunal, on consideration of the entire facts and circumstances, came to the conclusion that there was no breakage of period of business from 1.2.2014 to 26.2.2014 and hence, allowed the appeal declaring that she is eligible for input tax for the purchase effected during the period of transition. Aggrieved by the same, this Revision is filed by the State.

5. Heard the learned Senior Government Pleader, Shri V K Shamsudheen for the revision petitioner and Adv.Shri K M Firoz for the respondents.

6. The learned Senior Government Pleader submitted that under Section 11(4) of the KVAT Act, an unregistered dealer is not entitled for input tax credit. Since the assessee has stopped her business from 31.12.2013 and the registration was cancelled with effect from 31.1.2014 till 26.2.2014, the respondent was not having any registration and therefore, not entitled for input tax credit for the

purchase made during the transition period. The new partnership firm was registered only with effect from 26.2.2014 and the investigation branch found that though the assessee's registration was cancelled with effect from 31.1.2014, she continued business till 26.2.2014 with an intention to suppress the subsequent purchase and sales. He further contended that the Tribunal went wrong in allowing the appeal of the assessee, which is against Section 11(4) of the KVAT Act.

7. The counsel for the respondent argued that Rule 17A of the KVAT deals with application for registration. Rule 17 prescribes that every dealer required to be registered under Section 15 as on the date of commencement of the Act, other than a dealer registered under the Kerala General Sales Tax Act, 1963 shall submit to the registering authority of the area in which his principal place of business is situated, an application for registration within thirty days from the date on which these rules shall come into force.

8. Sub Rules 19 and 20 of Rule 17 of the KVAT Rules deal with registration and cancellation of certificates, which read as follows:-

“(19) Where a certificate of registration is cancelled, the registering authority shall issue to the dealer concerned a notice in Form No.5 B and shall publish the details in at least two leading dailies in the state and also in the website of the Commercial Taxes Department.

(20) The cancellation of registration shall be effective only from the date on which a copy of the order is served on the dealer or from the date of publication of such cancellation as specified under sub-rule(19), which ever is later.”

Based on the Sub Rules 19 and 20 of Rule 17 of the KVAT Rules, he contended that application for cancellation of registration was on 20.2.2014. The wordings of the said letter are extracted hereunder:-

“I am the proprietrix of Fidha trading at Kakkad Road, Kannur with the TIN mentioned above intend to close my business with effect from 31.12.2013. I am herewith enclosing the registration certificate with you now. I have entered into a new partnership firm under the name and style Fidha Trading at the same door number of my business is starting from 20th February 2014. The stock remaining with me are transferred to the new firm. Hence, I have no stock with me.”

9. Going by Rule 19 of KVAT Rules, her application was filed on 20.2.2014, the Registering authority after cancelling the registration ought to have issued the dealer a notice in Form No.5 B and publish the details in at least two dailies in the State and also in the website of the Commercial Tax Department. Cancellation will be effective only from the date on which the copy of the order is served or from the date of publication of such cancellation. So, at no stretch of imagination, it can be taken into consideration that the closure of business is from

31.12.13 when the application itself is only 20.2.2014. At the most the cancellation can be effective only from 26.2.2014, the date on which the fresh registration of the partnership form was allowed. According to him, only six days is the period in which there was no registration either for the erstwhile concerned or the present partnership firm. It is true that the registration once cancelled has to be published in two leading daily newspapers at least and the dealer should be informed as per notice in Form No.5 B. Then only the cancellation of registration shall be effective. The respondent does not have a case that prior to 20.2.2014 such an exercise was done. In the absence of the said exercise, we are of the view that the Tribunal was right in entering into a finding that the respondent is entitled to input tax credit. The legal position emerging out is that the respondent was not having any registration from 20.2.2014 to 26.2.2013 and hence, the finding of the Intelligence Officer as well as the First Appellate Authority was interfered by the Tribunal to that extent. Though factually

we are not in agreement with the case projected by the respondent in legal principle, we are of the view that the order of the Tribunal is in order. Hence, no interference warrants with the order passed by the Tribunal and consequently, the Revision fails and accordingly, this Other Tax Revision is dismissed.

It is made clear that this order shall not be treated as a precedent.

SD

**S.V.BHATTI,
JUDGE**

SD

**BASANT BALAJI,
JUDGE**

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APPENDIX OF OT.REV 135/2019

PETITIONER ANNEXURES

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| ANNEXURE A | THE TRUE COPY OF THE PENALTY ORDER DATED
15.12.2014 PASSED BY THE INTELLIGENCE
OFFICER(IB), KANNUR |
| ANNEXURE B | THE TRUE COPY OF THE ORDER DATED
27.06.2015 PASSED BY THE DEPUTY
COMMISSIONER, COMMERCIAL TAXES, KANNUR
IN KVAT RP NO.19/2015 |
| ANNEXURE C | CERTIFIED COPY OF THE ORDER DATED
5.3.2019 PASSED BY THE KERALA VALUE
ADDED TAX APPELLATE TRIBUNAL, ADDITIONAL
BENCH, KOZHICODE IN T.A.(VAT), NO.260/17 |