

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 315-316 OF 2001

MEENAKSHI AMMA & ANR.

Appellant (s)

VERSUS

STATE OF KERALA

Respondent(s)

(With office report)

WITH Civil Appeal NO. 317-318 of 2001

(With office report)

Date: 19/04/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Mr. M.P.Vinod,adv.

Mr.Roy Abraham,adv.

Mrs.Seema Jain,adv.

Mr.Himinder Lal,Adv.

For Respondent(s)

Mr. Ashish Verma,adv.

Mr. K.R. Sasiprabhu,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are disposed of.

[SUMAN WADHWA]

[MADHU SAXENA]

COURT MASTER

COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 315-316 OF 2001

Meenakshi Amma & Anr.

.. Appellants

vs.

State of Kerala

.. Respondent

WITH

CIVIL APPEAL NOS. 317-318 OF 2001

O R D E R

The appellants carry on the business of sale of Arrack in respect of the year 1991-92. The Sales Tax Officer assessed the tax payable by the appellants under the Kerala General Sales Tax Act 1963 taking the turnover of the appellants as Rs.1,47,68,000/-. This figure was arrived at after rejecting the books of accounts used by the appellants and on the basis of a best judgment assessment.

The appellants preferred an appeal before the Commissioner. The Appellate Commissioner was of the view that on the basis of the stock register the turnover could be fixed at Rupees 57 lakhs and tax levied accordingly. The matter was carried before the Sales Tax Tribunal both by the respondents authorities as well as by the appellants. The

Tribunal upheld the decision of the Sales Tax Officer to the extent that books of accounts were not properly maintained.

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However, the Tribunal was also of the view that the quantum of turnover fixed by the Sales Tax Officer was excessive. The Tribunal opined that even though no acceptable records were produced, nevertheless, the Sales Tax Officer should have taken into account the goods which were returned in fixing the turnover. Therefore, the Tribunal thought that it would be reasonable to treat 20% of the supply of 468,000 litres of Arrack to be a reasonable figure for calculating the turnover. On this basis, the average daily sales was fixed at 416 litres and the total turnover approximately at Rs.1.18 crores for the period in question. The High Court noted that despite the different opinions expressed by the several authorities below, there was no dispute on one factual aspect, namely, that the entire stock was not sold but there were in fact returns. The High Court was of the view that a 20% return fixed by the Tribunal did not have any basis. It also noted that under normal circumstances the matter would have to be remanded to the Tribunal to indicate the basis but having regard to the facts of the case, the High Court itself fixed the turnover at Rupees 95 lakhs.

Both the respondent authorities as well as the assessee have preferred appeals before us impugning this decision. In our opinion, the High Court should not have committed the same error for which the High Court itself

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had criticized the Tribunal, namely, the fixing of a figure without any basis. The difference in the fixation of the turnover by the various authorities has turned on one pivotal point, namely, the quantum of the goods returned.

We are of the view, therefore, that the matter should have been sent back to the Tribunal for ascertaining the same in accordance with law. Accordingly, the decision of the High Court is set aside and the matter is remitted to the Tribunal to ascertain that portion of stock which could be said to have been returned to the appellants for the period in question.

The appeals are disposed of.

.....J.

(RUMA PAL)

.....J.

(DALVEER BHANDARI)

New Delhi;

April 19, 2006.