(2011) 01 KL CK 0126

In the High Court Of Kerala

Case No : St. Rev. No. 270 of 2010

State of Kerala APPELLANT

Vs

United Breweries Ltd. RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 45A

Citation : (2011) 01 KL CK 0126

Hon'ble Judges : M.L. Joseph Francis, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—We heard the case on merits at the admission stage and therefore, proceed to dispose of the revision cases on merit.

2. The only question raised in the connected S.T. Revision cases filed by the State is whether the Tribunal was justified in cancelling penalty levied u/s 45A of the KGST Act. The allegation of the department is that the Respondent-company claimed 2% deduction towards discount given to the purchaser which is a Government of Kerala Company engaged as sole distributor of liquor in Kerala. There is nothing to indicate in the orders of the Tribunal or in the revision as to whether the 2% discount claimed by the Respondent was allowed in assessment or the entire price including discount was assessed as turnover. In any case on going through the Tribunal''s order we find that the Tribunal has clearly entered a finding that under agreement between Respondent-company and the Corporation, the price agreed was to be paid with a discount of 2%. In other words, the actual price is only 98% so far as the Respondent is concerned and the balance, though styled as discount, should be treated as notional value. We do not want to consider the scope of eligibility for deduction of discount in this case which is a matter to be considered only in assessment. However, as far as

penalty is concerned, we do not want to take a view different from what is concluded by the Tribunal because atleast party was justified in not remitting tax on the 2% discount amount which was not payable or paid by the purchaser to the Respondent. Consequently we uphold the orders of the Tribunal and dismiss the revision cases. However, as already pointed out, this judgment should not be treated as conclusive findings on conditions for grant of discount so far as assessment is concerned and with regard to interpretation of the provision on turnover tax.