IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

O.T.Rev.No. 52 of 2012

AGAINST THE ORDER IN T.A.(VAT)178/2010 of KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM DATED 24.11.2011

PETITIONER/RESPONDENT/ASSESSEE:

M/S.CENTURY RESINS & ALLIED PRODUCTS
KATTAMPILLY, KANNUR,
REPRESENTED BY ITS MANAGING PARTNER
K.S.ABDUL SATHAR.

BY ADVS. SRI.T.M.SREEDHARAN (SR.)
SMT.NISHA JOHN
SRI.V.P.NARAYANAN
SMT.BOBY M.SEKHAR

RESPONDENT/APPELLANT/REVENUE:

STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
SECRETRIAT, THIRUVANANTHAPUAM-695 001.

R BY SR. GOVERNMENT PLEADER SRI.LIJU STEPHEN

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON 07-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

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O.T.Rev.No.52 of 2012

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Dated this the 7th day of July, 2015

JUDGMENT

Antony Dominic, J.

In this revision filed by the assessee, the challenge is against the order passed by the Tribunal in T.A.(VAT)No.178/10. By the said order, the Tribunal took the view that the rate of tax of Phenol Formaldehyde (PF Resin) and Urea Formaldehyde (UF Resin) is 12.5%. This conclusion is based on its inference that these items are included under entry 3(3) under the list of goods taxable at 12.5% and G.O.(P)No.4/06 dated 21.1.2006. On the above basis, taking the view that the applicable HSN code is 3506.91.10 the Tribunal has decided the issue. However, the contention of the assessee throughout was that the rate of tax applicable is 4% and the applicable HSN Code is 3909.10.10 and 3909.40.20 and this contention has been rejected by the Tribunal. However, we find from the certificate dated 27.3.2012 issued by the Superintendent of Central Excise, Kannur Range, Kannur that according to that Department the relevant HSN Code is the one relied on by the assessee. It is also seen from Annexure E order No.CE.57111/06 dated 13.2.2008 issued under Section 94 of the KVAT Act that the Commissioner of Commercial Taxes himself has clarified that the

HSN Code is as contended by the assessee and the rate of tax applicable is 4%. These materials now produced by the assessee would though prima facie substantiate the case of the assessee, the issue was decided by the Assessing Officer and the Appellate Authorities without adverting to the material now relied on.

2. In such circumstances, we feel that it is a fit case that the matter should be remitted to the Assessing Officer to reconsider the applicable rate of tax of Phenol Formaldehyde (PF Resin) and Urea Formaldehyde (UF Resin) in the light of the documents referred to above. Therefore, setting aside the Annexure A, B and C orders of the Assessing Officer and the Appellate Authorities, to the issue regarding the rate of tax is decided, the matter is remitted to the Assessing Officer to reconsider the applicable rate of tax afresh with notice to the parties and pass fresh orders thereon. Ordered accordingly.

Revision is disposed of as above.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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