

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYASHTA, 1937

RP.No. 505 of 2015

AGAINST THE JUDGMENT IN W.P.(C).NO.15102 OF 2015, DATED 29-05-2015

REVIEW PETITIONER(S)/PETITIONER :

**COCHIN SANITARY STORES,
T.D.ROAD, ERNAKULAM, KOCHI-682 031,
REPRESENTED BY PARTNER SRI. K.J. SUDHAKARA KAMMATH.**

**BY ADVS.SRI.VIJAYAN. K.U.
SRI.K.V.VIMAL**

RESPONDENT(S)/RESPONDENTS :

- 1. INTELLIGENCE OFFICER,
SQUAD NO.1, COMMERCIAL TAXES,
MATTENCHERRY AT MINI CIVIL STATION, ALUVA- 683 101.**
- 2. COMMERCIAL TAX OFFICER (RECOVERY),
OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL TAXES,
MATTANCHERRY- 682 002.**
- 3. ASSISTANT COMMISSIONER,
SPECIAL CIRCLE, COMMERCIAL TAXES,
MATTANCHERRY AT ALUVA- 683 101.**

BY GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 18-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

RPNo. 505 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A: TRUE COPY OF THE NOTICE NO.F(RR)27/15-16
DATED 30.05.2015 ISSUED BY THE ADDITIONAL 4TH
RESPONDENT.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

R.P.No.505 of 2015

in

W.P.(C) No.15102 of 2015

Dated this the 18th day of June, 2015

ORDER

This review petition is filed by the writ petitioner. This Court while disposing the writ petition itself observed that the matter of classification of an item, a perception entertained by the Authority based on the assessment of the materials cannot be subjected to for a judicial review under Article 226 of the Constitution and there is no denial of natural justice as it was done in tune with the directions of the earlier judgment of this Court.

2. The issue now before this Court is that if the Authority is taking a different view on assessment, the petitioner ought to have been given an opportunity to substantiate the contention and this Court overlooked the above aspect while disposing the writ petition. The issue pertains to the classification of certain items by the petitioner. According to the petitioner, these items are brass items. However, the Authority after assessment found that these are sanitary fittings.

3. Essentially, the question now raised before this Court is regarding the assessment of the item by the petitioner, I do not find any

denial of natural justice in this context. This matter is essentially being a assessment of the certain item, I am of the view, whether erroneously or rightly assessed, the matter could not be reviewed by invoking power under Article 226 of the Constitution, especially, when the petitioner has an alternative remedy by way of challenging the same. Accordingly, I do not find any error apparent in the judgment and this review petition is dismissed.

4. However, learned counsel for the petitioner submits that in the appeal, the petitioner may be mulcted with the liability to remit 30% of the demand and they are threatened with recovery proceedings based on the penalty order.

5. I am of the view, the Appellate Authority, necessarily, shall consider the materials in question before passing an order on the stay application, it is only after ascertaining the nature of the item for classification, alone, any condition can be imposed, if so warranted. To work out the petitioner's alternative remedy before the Appellate Authority, recovery proceedings shall be deferred for a period of two months or till the disposal of the stay application.

With the above observation, the Review Petition is disposed of.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

In