

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

W.A.No. 320 of 2015 IN WP(C).597/2015

AGAINST THE JUDGMENT IN WP(C) 597/2015 of HIGH COURT OF KERALA DATED 08-01-2015

APPELLANT/PETITIONER:

T.B.SIMON
CHAIRMAN, THANDAR AND SONS TRUST, REG.NO.A/45/88
THIRUMALABHAGAM P.O., THURAVOOR
NOW RESIDING AT NANDANAM, THIRUMALABHAGAM P.O.
THURAVOOR, CHERTHALA, ALAPPUZHA-688 540.

BY ADVS.SRI.P.V.JAYACHANDRAN
SRI.SIVANANDAN.B.

RESPONDENT/RESPONDENT:

THE COMMERCIAL TAX OFFICER
OFFICE OF THE AIT AND COMMERCIAL TAX OFFICER
KUTHIATHODU, CHERTHALA, ALAPPUZHA DISTRICT 688 533.

R1 BY ADV. SR. GOVERNMENT PLEADER SRI.LIJU STEPHEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal No.320 of 2015

Dated this the 3rd day of June, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed against the judgment of the learned Single Judge dismissing the writ petition filed by the appellant in which Ext.P7 assessment order for the assessment year 2013-14 and Ext.P8 demand notice, were under challenge. Judgment under appeal shows that, the view taken by the learned Judge is that the remedy is before the statutory authorities themselves. It is this judgment which is under challenge before us.

2. We heard the counsel for the appellant and the learned Government Pleader.

3. According to the learned counsel for the appellant, Ext.P7 order of assessment shows that by insisting on hard copy of C forms, the Assessing Authority has violated the statutory provisions, which entitled him to maintain the writ petition under Article 226, instead of pursuing

the statutory remedies. Therefore, it is contended that the view taken by the learned Single Judge is erroneous.

4. Admittedly, there are statutory remedies provided under the KVAT Act against an order of assessment such as Ext.P7. Such statutory alternative remedies can be bypassed and orders of assessment can be challenged before this Court only in exceptional cases, such as cases where natural justice is violated or fundamental rights are violated and in cases where the statutory provisions on the basis of which the assessment orders are passed are under challenge. In so far as this case is concerned, we are not satisfied that even if the submission made by the learned counsel for the appellant is considered at its face value, the case of the appellant will not come without any of the aforesaid circumstances. In such a situation, the learned Judge was eminently justified in taking the view that the remedy available to the appellant is before the statutory authorities.

5. For these reasons, we do not find any ground to interfere with the judgment under challenge. Therefore, the appeal fails.

However, having regard to the pendency of the proceedings before this Court, it is ordered that the dismissal of the appeal shall be without prejudice to the rights of the appellant to pursue the statutory remedy available to him and if any appeal is filed on or before 20.6.2015, the same shall be considered by the concerned Appellate Authority ignoring the delay in the meanwhile.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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