IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WA.No. 1091 of 2015 () IN WP(C).28696/2009

AGAINST THE JUDGMENT IN WP(C) 28696/2009 of HIGH COURT OF KERALA DATED 17-12-2014

APPELLANT(S)/RESPONDENTS 1 TO 3 IN WPC:
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1. THE INTELLIGENCE OFFICER (B)
   KOLLAM.

2. THE DEPUTY COMMISSIONER APPEALS
   COMMERCIAL TAXES, KOLLAM.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
   TRIVANDRUM.

   BY SR GOVERNMENT PLEADER SMT.LILLY K.T.

RESPONDENT(S):

M/S. URBAN STANISLAUS AND CO.
KOLLAM, REPRESENTED BY ITS MANAGING PARTNER
VICTOR OLAV FERNANDEZ. PIN 691001.

R. BY ADV. SRI.PREMJIT NAGENDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.1091 of 2015

Dated this the 28th day of July, 2015

JUDGMENT

Antony Dominic, J.

1. Levy of penalty on the respondent was set aside by the learned single Judge in W.P(C).28696/09 filed by the respondent assessee. It is this judgment which is challenged before us.

2. The relevant assessment years are 2000-01, 2001-02 and 2002-03. By the Kerala Finance Act, 1998, sub-sections 2, (2A) and (2B) were incorporated in section 5 of the KGST Act, whereby, in respect of manufactured goods other than Tea, which were sold under brand name or trade mark, the sale by the brand name holder or trade mark holder within the State was deemed as the first sale for the purpose of the Act. In various writ petitions filed before this Court, these provisions were stayed and the order of stay continued till 8.4.2003 when these provisions were upheld by this Court.

3. In the mean time, the assessee filed returns for the assessment years mentioned above, claiming exemption

treating the sale as second sale. Proceedings were initiated and finally Exts.P1 to P3 orders were issued imposing penalty at the rate of double the amount of tax. The assessee filed revision which resulted in Exts.P4 and P9 orders, whereby, the penalty stood reduced to equal amount of tax. It is challenging these orders, the writ petition was filed.

4. The judgment under appeal shows that the learned single Judge allowed the writ petition mainly for the reason that the provisions introduced by the Kerala Finance Act, 1988 were stayed during the relevant period and therefore, the assessee should not have been penalised for claiming exemption.

5. We heard learned Government Pleader appearing for the appellants and learned counsel appearing for the respondent assessee.

6. The fact that the provisions which made the sale in question first sale in the State were stayed during the relevant period and that the stay continued till

8.4.2003 are undisputed. Since it is so, during the said period, if the assessee has proceeded on the basis as of the law it stood prior to the introduction of the Finance Act, 1988 that conduct of the assessee does not justify levy of penalty. This view taken by the learned single Judge, according to us, does not suffer from any illegality for interference.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

kkb.

/True copy/

PS to Judge