IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WA.No. 1544 of 2015 () IN WP(C).15102/2015

AGAINST THE JUDGMENT IN WP(C) 15102/2015 of HIGH COURT OF KERALA DATED 29.05.2015

APPELLANT/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

RESPONDENTS/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.

R1 TO R3 BY SENIOR GOVERNMENT PLEADER SRI.LIJU STEPHEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

W.A. No.1544 of 2015

Dated this the 5th day of August, 2015

JUDGMENT

Antony Dominic,J.

Appellant is a dealer under the KVAT Act. By Exts.P16 to 20 orders, issued under Section 67 of the Act, penalty was levied on the appellant on the ground that Yash Hose Tap and Onida Washing Machine Tap, attracting tax at the rate of 12.5% as per Entry No.101 of SRO No.82/2006 were mis-classified and tax was collected and remitted at a lower rate. These orders were challenged before this Court in writ petition No.4222/2015. The writ petition was disposed of by Ext.P21 judgment, holding that the issue of classification being a mixed question of law and fact, it was incumbent upon the taxing authority to correctly determine the classification of the item before arriving at a finding that the item in question has been mis-classified by the dealer.

2. Accordingly, the matter was re-considered and Exts.P26 to 30 orders were issued imposing penalty on the ground that

the sanitary goods in question were mis-classified. It was challenging these orders, the appellant filed writ petition No.15102 of 2015. By judgment dated 29.05.2015, the writ petition was dismissed giving liberty to the appellant to pursue their remedies before the statutory authorities. Seeking review of the judgment, appellant filed R.P. No.505 of 2015. The review petition was declined to be entertained by order dated 18.06.2015. It is in these circumstances, the writ appeal has been filed.

3. We heard the learned counsel for the appellant and the learned Government Pleader appearing for the respondents.

4. Contention raised by the counsel for the appellant is that the products in question being articles of brass,are covered by Entry 3(2) of Schedule III, to the KVAT Act. Therefore, he argues that the premise on which the respondents have proceeded treating the products in question to fall under Entry 101 of SRO 82/2006 is incorrect and illegal. Counsel also referred us to the judgment of this Court in **Shobha T.P. v. Commissioner of Commercial Taxes** [(2010) 18 KTR 401]. On the other hand, learned Government Pleader referred us to the

impugned orders, Ext.P5 judgment of this Court and the terms of Entry 101 of SRO 82/2006 and contended that the authorities have correctly held that the products fall under Entry 101 and that therefore, the levy of penalty did not merit any interference.

5. In so far as this case is concerned, although both sides have addressed their contentions, we are conscious of the fact that the scope for enquiry in this appeal is confined to the question whether the view taken by the learned Single Judge relegating the appellant to pursue the statutory remedies is legal or not. Admittedly, the statutory remedies are available to the appellant against the orders impugned in the writ petition. Law is settled that when an alternative statutory remedy is available except in exceptional cases involving challenge against the statutory provisions or violation of principles of natural justice or when any action is challenged on the ground of want of jurisdiction, such writ petition filed without exhausting such remedies will not be entertained. In so far as this case is concerned, we are not satisfied that any of these exceptional situations have been made out by the appellant.

6. That apart, the issue involved is regarding the

classification of the products in question. Such an issue is not a pure question of law but is a mixed question of fact and law. Such a dispute, should be resolved by the statutory fact finding authorities.

7. For these reasons, we are not satisfied that the learned Single Judge has acted illegally in relegating the appellant to pursue the statutory remedies that are available to them.

However, having regard to the pendency of the proceedings before this Court, since the time for filing revision against the order impugned has expired, we direct that if the appellant files revision against the impugned orders within two weeks from today, the concerned revisional authority shall entertain the same and pass orders thereon on merits ignoring the delay.

Subject to the above, the writ appeal is dismissed.

Sd/-

ANTONY DOMINIC
JUDGE
Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

smv P.A. To Judge