IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).No. 18005 of 2006 (R)
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PETITIONER(S):

K.A.RASSIA,
ALACKAL HOUSE, NELLIKUZHY P.O.

BY ADVS.DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENT(S):
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1. **THE SALES TAX OFFICER,**
   COMMERCIAL TAXES, KOTHAMANGALAM.

2. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   PUBLIC BUILDING, MUSEUM JUNCTION,
   THIRUVANANTHAPURAM-695 033.

3. **THE DEPUTY COMMISSIONER,**
   COMMERCIAL TAXES, MATTANCHERRY.

BY GOVERNMENT PLEADER SRI.R.RENJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 18005 of 2006 (R)
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P1 : **COPY OF THE PENALTY ORDER DATED 7/11/95 PASSED BY THE R1 FOR THE YEAR 1992-93.**

P2: **COPY OF THE FIRST REVISION OFRDER DATED 28/12/2000**

P3: **COPY OF THE SECOND REVISION ORDER DATED 4/3/2006 PASSED BY THE R2**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 18005 of 2006

Dated this the 12th day of August, 2015

JUDGMENT

The petitioner has approached this Court challenging penalty order under Section 10A of the C.S.T. Act.

2. The petitioner was an assessee and she was dealing in edible oil. The original assessment was made in respect of the year 1992-93 and it was completed in the year 1993-94. The present issue is based on the claim made by the petitioner based on 'C' Form. It was found by the authority that the petitioner made the claim based on misuse of 'C' Form and the penalty was imposed.

3. The petitioner purchased empty tins and labels worth Rs.12,50,685/- by issuing 'C' Form from outside the State. It was found out in subsequent scrutiny that registration certificate did not contain the items which were purchased from outside the state. Therefore, the Assessing Authority imposed a penalty of Rs.1,87,603/- for misuse of 'C' Form.

4. The case of the petitioner is that the tins and labels were purchased on a bonafide belief that the petitioner is entitled to purchase the same by issuing 'C' Form. Therefore, it is contended that there is no element of *mens rea* to evade tax, it is only on account of a bonafide mistake.

5. It is to be noted that the registration certificate of the petitioner, admittedly, did not contain those items in respect of which the petitioner had issued 'C' Form. The Revisional Authority, in fact, had taken a lenient view and reduced a penalty as a payment of tax. This Court invoking the power of judicial review is required to consider the decision making process of the Authority. Adverting to the factual situation, the Authorities have come to a conclusion that there was a misuse of C-Forms and Revisional Authority took a lenient view and reduced a penalty as a payment of tax.

I do not find any infirmity with the order especially in the light of reduction of the penalty as a payment of tax. Therefore, there is no merit in this writ petition. Accordingly, the writ petition is dismissed.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

bpr