IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(C).No. 15102 of 2015 (K)
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PETITIONER(S) :

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):
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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 WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 15102 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE RELEVANT PORTION OF THE S.L.NO.101.

EXHIBIT P2: TRUE COPY OF THE REQUEST FOR CLARIFICATION SOUGHT BY SREE PADMANABHA ENTERPRISES ON 04.10.2005.

EXHIBIT P3: TRUE COPY OF CLARIFICATORY LETTER NO.C8.48888/05/CT DATED 08.03.2006 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES.

EXHIBIT P4: TRUE COPY OF THE RE-CLARIFICATION ISSUED BY THE COMMERCIAL VIDE LETTER NO.C8-48888/CT DATED 27.04.2006.

EXHIBIT P5: TRUE COPY OF THE DECISION IN O.T.APPEAL NO.5/2006 DATED 26.05.2008.

EXHIBIT P6: TRUE COPY OF NOTICE NO.ISM-37/14-15(2009-10), DATED 04.11.2014.

EXHIBIT P7: TRUE COPY OF NOTICE NO.ISM-37A/14-15 (2010-11), DATED 04.11.2014.

EXHIBIT P8: TRUE COPY OF NOTICE NO.ISM-37B/14-15 (2011-12), DATED 04.11.2014.

EXHIBIT P9: TRUE COPY OF NOTICE NO.ISM-37C/14-15 (2012-13), DATED 04.11.2014.

EXHIBIT P10: TRUE COPY OF NOTICE NO.ISM-37D/14-15 (2013-14), DATED 04.11.2014.

EXHIBIT P11: TRUE COPY OF THE REPLY FOR THE YEAR 2009-10 DATED 04.11.2014.

EXHIBIT P12: TRUE COPY OF THE REPLY FOR THE YEAR 2010-11 DATED 04.11.2014.

EXHIBIT P13: TRUE COPY OF THE REPLY FOR THE YEAR 2011-12 DATED 04.11.2014.

EXHIBIT P14: TRUE COPY OF THE REPLY FOR THE YEAR 2012-13 DATED 04.11.2014.

EXHIBIT P15: TRUE COPY OF THE REPLY FOR THE YEAR 2013-14 DATED 04.11.2014.

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EXHIBIT P16: TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2009-10 DATED 15.01.2015.

EXHIBIT P17: TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2010-11 DATED 15.01.2015.

EXHIBIT P18: TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2011-12 DATED 15.01.2015.

EXHIBIT P19: TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2012-13 DATED 15.01.2015.

EXHIBIT P20: TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2013-14 DATED 15.01.2015.

EXHIBIT P21: TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.4222/2015 DATED 13.02.2015.

EXHIBIT P22: TRUE COPY OF THE NOTICE DATED 23.03.2015 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P23: TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER FIRM ON 30.03.2015.

EXHIBIT P24: TRUE COPY OF LETTER DATED 04.04.2015 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P25: TRUE COPY OF THE REPLY DATED 10.04.2015 SUBMITTED BY THE PETITIONER FIRM.

EXHIBIT P26: TRUE COPY OF THE ODER NO.ISM 37/14-15(09-10)FOR THE YEAR 2009-10 DATED 24.04.2015.

EXHIBIT P27: TRUE COPY OF THE ODER NO.ISM 37/14-15(10-11)FOR THE YEAR 2010-11 DATED 24.04.2015.

EXHIBIT P28: TRUE COPY OF THE ODER NO.ISM 37/14-15(11-12)FOR THE YEAR 2011-12 DATED 24.04.2015.

EXHIBIT P29: TRUE COPY OF THE ODER NO.ISM 37/14-15(12-13)FOR THE YEAR 2012-13 DATED 24.04.2015.

EXHIBIT P30: TRUE COPY OF THE ODER NO.ISM 37/14-15(13-14)FOR THE YEAR 2013-14 DATED 24.04.2015.

RESPONDENT(S)' EXHIBITS NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

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

Dated this the 29th day of May, 2015

<u>J U D G M E N T</u>

This writ petition is filed challenging Exts.P26 to P30 orders imposing penalty. Earlier the petitioner has approached this Court in W.P.(C).No.4222/2015 and this Court set aside the penalty imposed and directed the petitioner to appear before the 1st respondent on 28.02.2015 with all necessary documents to substantiate his case on merits. The issue is pertaining to classification of sanitary items. This Court in the above judgment found that, the issue of classification being a mixed question of fact and law, taxing authority has to determine the classification of the item before arriving at a finding that the item in question has been misclassified by the assessee dealer.

2. The learned counsel for the petitioner submits that, after furnishing details, inspite of making specific request that he should be given further opportunity in the matter before proceeding further, they were not given an opportunity. It is further submitted that, the impugned order is passed in violation of the directions of this Court.

3. The matter to be noted is that, this Court specifically directed the petitioner to appear on 28.02.2015 with all relevant documents. The petitioner also appeared and submitted all the

documents. The natural justice in such circumstances could only be understood in terms of the direction of this Court, not beyond. It is no doubt that, the authorities are bound to verify the relevant materials produced by the petitioner. After having verified and came to a conclusion, the procedure adopted cannot be found fault with. If the petitioner has any grievance on the merit of the order, he is at liberty to challenge the same in appropriate proceedings.

With that liberty, this writ petition is dismissed.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV