

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WA.No. 764 of 2015 () IN WP(C).8748/2015

AGAINST THE JUDGMENT IN WP(C) 8748/2015 of HIGH COURT OF KERALA
DATED 19.3.2015

APPELLANT(S)/PETITIONER(S):

K.A. NAZAR
PROPRIETOR, AKBAR TRADING COMPANY,
KARAPPUZHA PO, KOTTAYAM DISTRICT.

BY ADVS. SRI. K. N. SREEKUMARAN
SRI. P. D. UNNIKANNAN NAIR

RESPONDENT(S)/RESPONDENTS:

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1. INTELLIGENCE OFFICER (IB)
COMMERCIAL TAXES, SASTRI ROAD, KOTTAYAM.
 2. DEPUTY COMMISSIONER
COMMERCIAL TAXES, KOTTAYAM
 3. INSPECTING ASSISTANT COMMISSIONER
COMMERCIAL TAXES, KOTTAYAM
 4. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

R BY SR GOVERNMENT PLEADERS SRI. M. A. FAYAZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 31-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.764 of 2015

Dated this the 31st day of July, 2015

JUDGMENT

Antony Dominic, J.

1.Appellant filed w.P(C).8748/15 challenging Exts.P10 to P12 conditional orders passed by the second respondent directing that pending disposal of the revision petition, the recovery of the penalty would stand stayed subject to the appellant remitting 30% penalty levied for the assessment years 2007-08, 2008-09 and 2009-10. By the judgment under appeal, learned single Judge disposed of the writ petition, modifying the conditions imposed and directing remittance of 15% as against the 30% ordered.

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

3.Admittedly, penalty has been levied on the appellant on the ground of misclassification of goods. Against that order, the appellant had already sought for the statutory remedy of revision before the second

respondent. Along with the revision, the appellant filed applications for stay of recovery of the penalty. It is on those applications the impugned orders were passed requiring remittance of 30% as penalty, which has now been reduced to 15%.

4. Although learned counsel for the appellant raised several contentions on the merits to sustain his plea that there was no misclassification justifying levy of penalty, to our mind, such contentions now raised before us are premature for the reason that as at present, these are matters to be considered by the authority before whom the revision is pending. Therefore, we decline to deal with those contentions which are now pressed before us.

5. As far as the condition imposed by the learned single Judge is concerned, as already stated, the revisional authority, exercising its discretion, directed remittance of 30% as penalty and that discretionary order was modified by the learned single Judge, directing the appellant to remit 15%. That order passed by the learned single Judge cannot, by any

stretch of imagination, be said to be illegal. We do not find any reason to interfere with the judgment under appeal.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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/True copy/

PS to Judge