IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 22ND DAY OF SEPTEMBER 2016/31ST BHADRA, 1938

WP(C).No. 17595 of 2016 (Y)

PETITIONER:

M/S.INDOT COLOR WORLD,
CHALAKUDY, THRISSUR DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER,
JOSE CHUMMAR.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

1. THE COMMERCIAL TAX OFFICER,
CHALAKUDY - 680307.

2. THE INTELLIGENCE OFFICER(IB),
DEPARTMENT OF COMMERCIAL TAXES,
MATTANCHERRY AT MINI CIVIL STATION,
ALUVA - 683101.

BY GOVERNMENT PLEADER SRI.SHAMSUDHEEN.V.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 17595 of 2016 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 COPY OF ORDER ISSUED BY THE 2ND RESPONDENT

P2 COPY OF ORDER ISSUED BY THE AUTHORITY FOR CLARIFICATION UNDER SECTION 94 OF THE VAT ACT

P3 COPY OF APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT

P4 COPY OF NOTICE ISSUED BY THE IST RESPONDENT

P5 COPY OF OBJECTION FILED BY THE PETITIONER

P6 COPY OF ORDER ISSUED BY THE IST RESPONDENT

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M.SHAFFIQUE, J

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W.P.C.No.17595 of 2016

Dated this the 22nd day of September 2016

J U D G M E N T

Petitioner challenges Ext.P6, an order of assessment passed by the Assessing Officer for the assessment year 2013-14. Petitioner is engaged in the trading of photographic papers, films, chemicals. One of the issues relates to a demand for tax on printed digital photo albums. According to the petitioner, the issue had already been decided as per clarification issued by the Commissioner in the matter relating to M/s.Colortone Process Pvt. Ltd. wherein it has been held that the product of the said applicant namely printed photographs in book form has to be taxed only at the rate of 5% by virtue of entry 100(5) of the third schedule to the Act. According to the petitioner, though such a contention was taken at the time when the Assessing Officer was considering the issue, the Assessing Officer did not take note of the clarification on the ground that the offence had already been compounded by the petitioner.

2. It is submitted by the petitioner that, earlier penalty proceedings were taken against the petitioner alleging that the

printed photo albums have to be taxed at 14.5% under Entry 77 (6). Without contesting the matter, the petitioner submitted an application for compounding which was allowed as per Ext.P1 order dated 15/07/2015. Later, the petitioner came to know about the clarification issued in the matter relating to M/s.Colortone Process Pvt. Ltd. and accordingly rectification application is filed as per Ext.P3 on 11/02/2016 seeking for refund of the amount which is pending consideration. It is, in the meantime, that the proceedings were taken by issuance of notice dated 01/04/2016 under Section 25(1) of the Act, which resulted in Ext.P6 order.

3. Heard Learned counsel for the petitioner and the learned Government Pleader.

4. The short issue to be considered is whether Ext.P6 can be set aside by this Court bypassing the alternate remedy available under the statute. The main contention urged by the petitioner is that order had been passed without reference to the clarification, Ext.P2. Perusal of Ext.P6 order would show that the authority had considered the matter in the following manner:

“The reply filed by the assessee has been

> *examined. Regarding the first point the argument put forth by the assessee is not acceptable since the assessee has admitted the offence in writing before the Intelligence Officer. The assessee could have obtained clarification under Section 94 before compounding the offence. Once compounding the offence before the Intelligence Officer the assessee cannot deviate and argue against the compounding. Hence this argument is rejected. Moreover the assessee in this case has not remitted the tax due nor revised the return for 2013-14."*

5. Though the learned Government Pleader supports the stand taken by the Officer, it is apparent that when a clarification had been issued under Section 94 of the Act, the Officer is bound to comply with the same. Merely for the reason that the petitioner had submitted an application for compounding which had been allowed, does not deprive the right of the petitioner to take a contention based on a clarification issued by the Commissioner. Under such circumstances, the Assessing Officer had committed serious error of law in coming to the aforesaid finding and for that reason itself, the impugned order is liable to

be set aside.

Accordingly, this writ petition is disposed of as follows:

i) Ext.P6 is set aside.

ii) The Assessing Officer is directed to consider the matter afresh, after taking note of the clarification, Ext.P2 and appropriate orders may be passed, in accordance with law, after hearing the petitioner.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr