IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

RP.No. 996 of 2015 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 18358/2015 DATED 19-10-2015)

REVIEW PETITIONER/PETITIONER:

M/S. MALLELIL INDUSTRIES PVT. LTD.,
ATTACHAKKAL P.O., KONNI, PATHANAMTHITTA,
REPRESENTED BY ITS MANAGING DIRECTOR,
R.SREEDHARAN NAIR.

BY ADVS.SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH

RESPONDENTS/RESPONDENTS:

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1. THE INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
PATHANAMTHITTA-689 645.

2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM-695 001.

BY GOVERNMENT PLEADER SMT. LILLY.K.T

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 13-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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A.K.JAYASANKARAN NAMBIAR, J.

...

R.P.No.996 of 2015

in

W.P.(C).No.18358 of 2015

...

Dated this the 13th day of November, 2015

<u>O R D E R</u>

The review petition has been filed seeking a clarification of the judgment dated 19.10.2015 on the apprehension that the observations in the judgment might render nugatory the alternate remedy, of filing an appeal before the appellate authority under the Kerala Value Added Tax Act, that was reserved to the writ petitioner while dismissing the writ petition filed by him. On a consideration of the submissions made by counsel for the review petitioner, and on going through the judgment dated 19.10.2015, I find that in the said judgment, I had only held that the contention of the petitioner, that the assessment based on the production capacity must be completed based on the production capacity of the machines as determined through a trial run conducted by the department, cannot be acceded to. This would mean that, if the petitioner has any other contention with regard to the actual production capacity of the machine, it would be open him to establish that the actual production capacity of the machine is different from what is stated in the brochures relating to the machine, by recourse to materials obtained from the manufacturer of the machine, and the judgment referred to above does not preclude the petitioner from relying on any such material before the appellate authority. In that view of the matter, I find no reason to review the judgment impugned in this review petition. The review petition fails and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/13.11.15