IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 585 of 2015 (W)

PETITIONER(S):

M/S.PROMPT ASSAY & HALL MARKING CENTRE,
C.M.MATHEW BROTHERS TOWERS, KOZHIKODE,
REPRESENTED BY ITS PARTNER -SATHEESH PRATHAP.

BY ADVS.SRI.K.I.MAYANKUTTY MATHER,
SRI.R.JAIKRISHNA.

RESPONDENT(S):
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1. **INTELLIGENCE OFFICER, SQUAD NO.II,**
   OFFICE OF INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, KOZHIKODE-673 001.

2. **DEPUTY COMMISSIONER,**
   COMMERCIAL TAXES, KOZHIKODE-673 001.

3. **INSPECTING ASSISTANT COMMISSIONER,**
   OFFICE OF INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, KOZHIKODE-673 001.

BY GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 585 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT-P1:	TRUE COPY OF THE SHOP INSPECTION REPORT DATED 29.10.2013.
EXHIBIT-P2:	TRUE COPY OF THE RELEVANT EXTRACT OF THE JEWELLERY RECEIPT AND DELIVERY REGISTER DATED NIL.
EXHIBIT-P3:	TRUE COPY OF THE JEWELLERY RECEIPT NO.996 DATED 28.10.2013.
EXHIBIT-P4:	TRUE COPY OF THE JEWELLERY RECEIPT NO.997 DATED 28.10.2013.
EXHIBIT-P5:	TRUE COPY OF THE INVOICE DATED 29.10.2014.
EXHIBIT-P6:	TRUE COPY OF THE PENALTY ORDER PASSED BY THE 1ST RESPONDENT DATED 01.09.2014.
EXHIBIT-P7:	TRUE COPY OF THE CONFIRMATION LETTER ISSUED BY PERSIAN JEWELLERY DATED 28.10.2013.
EXHIBIT-P8:	TRUE COPY OF THE CONFIRMATION LETTER ISSUED BY ATLAS GOLD SUPERMARKETS DATED 29.11.2013.
EXHIBIT-P9:	TRUE COPY OF THE GENERAL REQUIREMENTS FOR COMPETENCE OF ASSAYING AND HALLMARKING CENTRES ISSUED BY INDIAN STANDARDS (IS 15820: 2009) DATED NIL.
EXHIBIT-P10:	TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 17.11.2014.
EXHIBIT-P10(A):	TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 17.11.2014.
EXHIBIT-P11:	TRUE COPY OF THE CONDITIONAL ORDER OF STAY PASSED BY THE 2ND RESPONDENT DATED 17.12.2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.585 of 2015 (W)

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Dated this the 15th day of January, 2015

JUDGMENT

The petitioner, who runs a testing and certification centre for ornaments for the purposes of hallmarking the gold articles that are entrusted to him, is also a registered dealer under the Kerala Value Added Tax Act, 2003. Pursuant to a shop inspection that was carried out by the respondent, the petitioner was served with Ext.P6 penalty order passed by the first respondent, whereby an amount of Rs.23,52,932/- was imposed on him by way of penalty for the assessment year 2013 – 2014, for the offence of failure to maintain true and complete accounts. The penalty amount is quantified at twice the amount of tax that, according to the respondents, the petitioner would be liable to pay in an assessment done by the respondents.

2. Challenging Ext.P6 order, the petitioner preferred Exts.P10 revision petition and P10(a) stay application before the second respondent. When the stay application was taken up for hearing, the second respondent, after considering the submissions of the petitioner, proceeded to pass Ext.P11 order granting a conditional stay of recovery of the penalty amount confirmed against the petitioner, subject to the condition that the petitioner pays 30% of the amount confirmed against him and furnishing

sufficient security for the balance amount to the satisfaction of the assessing authority. The amount of 30% was to be paid within two weeks from the date of receipt of Ext.P11 order.

3. In the writ petition, Ext.P11 order is impugned, inter alia, on the ground that, the said order was passed by the second respondent without proper application of mind. It is the contention of the petitioner that, while passing Ext.P11 order, the second respondent had not considered the nature of the activities carried on by the petitioner and, in particular, that the levy of tax under the Kerala Value Added Tax Act was not attracted to the transactions carried out by the petitioner. It is also the case of the petitioner that, while considering the stay petition, the second respondent also did not look into the assessment history of the petitioner, which would have clearly shown that the petitioner had never been subjected to levy of VAT/sales tax in respect of the activities carried on by him.

4. I have heard Sri.K.I.Mayankutty Mather, learned counsel for the petitioner and Smt.Sobha Annamma Eappen, learned Government Pleader for the respondents.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that while

the petitioner has preferred a revision before the second respondent against Ext.P6 order of penalty, and the said revision is to be adjudicated on merits by the second respondent, by Ext.P11 order, that is now passed in the stay petition filed along with the revision petition, the second respondent has directed a payment of 30% of the amount confirmed on the petitioner by way of penalty, as a pre-condition for the hearing of the revision. While under normal circumstances, this Court would be reluctant to interfere with conditional orders of stay passed by appellate/revisional authorities, I find that this is a case where the specific contention of the petitioner is that, he would not be liable to any tax at all under the KVAT Act, inasmuch as his business activities would not come within the purview of the KVAT Act. It is his specific contention that, the activities carried on by him are more in the nature of rendering of services and, therefore, the liability to sales tax would not be attracted. In that view of the matter, I feel that when an appellant/revisional authority considers an application for stay, it must be mindful of the nature of the contentions raised by the assessee while passing orders in the stay petitions. This would be necessary because, in a case where the assessee is contending that, he has no liability to tax whatsoever, and therefore, no liability to penalty either, then, even a direction to deposit 30% of amounts confirmed in the assessment/penalty orders would cause serious prejudice to the interest of the assessee. In my view, the present is a case where a conditional order of stay is not justified for the reason that the contention of the petitioner, in the revision petition filed against the penalty order, is that he will not come under the coverage of the KVAT Act itself.

Under the circumstances, I am of the view that, the interests of justice would require the second respondent to consider the revision petition, preferred by the petitioner against Ext.P6 penalty order, on merits, and without insisting on any condition for the grant of stay pending disposal of the revision petition. Accordingly, I quash Ext.P11 order and direct the second respondent to consider and pass orders on Ext.P10 revision petition preferred by the petitioner within a period of two months from the date of receipt of a copy of this judgment. I make it clear that, coercive steps for recovery of any amount confirmed against the petitioner by Ext.P6 order, shall be kept in abeyance till such time as orders are passed by the second respondent on Ext.P10 revision and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/16/01/