IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No.593 of 2015 (Y)

PETITIONER:

M/S.OJIN FOODS (P) LTD,CONVENT ROAD,KOZHIKODE,
REPRESENTED BY ITS MANAGING DIRECTOR,JUNAIS A.K.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER,
1ST CIRCLE,KOZHIKODE-673 001.

2. THE INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
SALES TAX COMPLEX,JAWAHAR NAGAR,
KOZHIKODE-6.

BY SENIOR GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.593 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:A TRUE COPY OF THE ASSESSMENT ORDER DTD.6.2.2013 ISSUED BY THE ASSESSING AUTHORITY IN RESPECT OF THE PERIOD 2010-11.

EXT.P2:TRUE COPY OF THE NOTICE DTD.15.10.2014 ISSUED U/S.25 OF THE KVAT ACT, FROM THE 1ST RESPONDENT RECEIVED BY THE PETITIONER.

EXT.P3:A TRUE COPY OF THE REPLY DTD.14.11.2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P4:A STATEMENT SHOWING THE BIFURCATION OF THE TURNOVER FOR THE PERIOD 2010-11.

EXT.P5:A TRUE COPY OF THE ANNUAL RETURN SUBMITTED BY THE PETITIONER FOR THE PERIOD 2010-11.

EXT.P6:A TRUE COPY OF THE ASSESSMENT ORDER DTD.8.12.2014 IN RESPECT OF THE PERIOD 2010-11 ISSUED BY THE 1ST RESPONDENT.

EXT.P7:TRUE COPY OF THE DEMAND NOTICE DTD.31.12.2014 UNDER THE KERALA REVENUE RECOVERY ACT, ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.593 of 2015 (Y)

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Dated this the 8th day of January, 2015

JUDGMENT

The petitioner, who is an assessee on the rolls of the first respondent, is conducting a bakery business in Kozhikode. The challenge in the writ petition is against Ext.P6 order of assessment and Ext.P7 demand notice that have been served on the petitioner for the assessment year 2010 - 2011.

2. Although, the petitioner would raise various contentions while impugning Ext.P6 order in these proceedings under Article 226 of the Constitution of India, I am of the view that the petitioner has got an effective alternative remedy under the Kerala Value Added Tax Act, 2003, to challenge the assessment order before the appellate authority under the said act.

3. It is trite that interference, with assessment orders under taxing statutes, in proceedings under Article 226 of the constitution, can only be in very limited circumstances where there is a fundamental flaw in the jurisdiction exercised or there is an established case of violation of natural justice or in cases where the demand or proceedings are hit by the provisions of limitation. Inasmuch as in the present case, I do not see any such irregularity, I am of the view that the writ petition

challenging Ext.P6 order is not maintainable and the petitioner ought to be relegated to the course of approaching the appellate authority under the KVAT Act. Resultantly this writ petition is dismissed as not maintainable without prejudice to the right of the petitioner to approach the appellate authority under the KVAT Act for redressal of his grievance against Ext.P6 assessment order.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/09/01/