IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 1186 of 2015 (W)

PETITIONER :

T.M.FIROZE,PROPRIETOR,
M/S.T.M.POULTRY FARM, SEETHAMGOLI,
MARKET ROAD, KASARAGOD.

BY SRI.T.M.SREEDHARAN,SENIOR ADVOCATE
ADVS. SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENT(S):
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1. THE ASSISTANT COMMISSIONER (KVAT),
COMMERCIAL TAXES SPECIAL CIRCLE,
KASARAGOD-671 121.

2. THE INTELLIGENCE OFFICER (IB),
OFFICE OF THE INSPECTING ASSISTANT
COMMISSIONER (INTELLIGENCE),
COMMERCIAL TAXES, KASARAGOD-671 121.

R1 & R2 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 1186 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF THE COMMON JUDGMENT IN WPC.NOS.27576 AND 30063/2011 AND 9415/12 OF THIS HON'BLE COURT.

EXT.P2 : TRUE COPY OF THE ORDER NO.IB (K/141/2010-11 DT. 30-3-14 ISSUED BY THE 2ND RESPONDENT

EXT.P3 : TRUE COPY OF THE APPLICATION 17-1-14 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR COMPOUNDING FOR 2010-11.

EXT.P4 : TRUE COPY OF THE APPLICATION 17-1-2014 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR COMPOUNDING FOR 2011-12.

EXT.P5 : TRUE COPY OF THE RECEIPT DT. 24-3-2014 FOR HAVING PAID THE COMPOUDING FEES FOR 2010-11.

EXT.P6 : TRUE COPY OF THE RECEIPTS DT. 24-3-2014 FOR HAVING PAID THE COMPOUNDING FEES FOR 2011-12.

EXT.P7 : TRUE COPY OF THE NOTICE DT. 26-12-13 ISSUED BY THE 2ND RESPONDENT.

EXT.P8 : TRUE COPY OF THE REPLY DT. 30-12-13 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT

EXT.P9 : TRUE COPY OF THE NOTICE DT. 20-11-14 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2010-11.

EXT.P10 : TRUE COPY OF THE NOTICE DT. 20-11-14 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2011-12.

EXT.P11 : TRUE COPY OF THE REPLY DT.5-1-15 SUBMITTED BY THE PETITIONER BEFORE THE ASST.COMMISSIONER KVAT, KASARAGOD.

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1186 OF 2015

Dated this the 13th day of January, 2015

J U D G M E N T

The challenge in this writ petition is against Exts.P9 and P10 notices issued under Section 25(1) of the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act'), in respect of the KVAT assessment for the years 2010-2011 and 2011-2012. The petitioner has produced, as Ext.P11, a copy of the common reply that he has filed in response to Exts.P9 and P10 notices before the 1st respondent. The sole apprehension of the petitioner in the present writ petition is that the 1st respondent may complete the proceedings initiated by Exts.P9 and P10 notices by ignoring the orders of penalty already passed in respect of the petitioner for the said assessment years, and without taking into account the material that was relied upon for passing the said orders of penalty. The case of the petitioner in the writ petition is that even in Exts. P9 and P10 notices, the demand against the petitioner has been exaggerated and, if the material on the basis of which the penalty proposals were confirmed are taken into consideration, the amounts shown as proposed in Exts.P9 and P10 notices cannot be confirmed on the petitioner. It is also the apprehension of the petitioner that the 1st respondent may not afford him an opportunity to cross examine the persons whose statements have been relied upon for the purposes of proceeding against the petitioner through Exts.P9 and P10 notices. The petitioner has also requested for copies of documents relied upon by the 1st respondent.

2. I have heard Sri.T.M.Sreedharan, the learned Senior counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that the challenge of the petitioner, to Exts.P9 and P10 notices, in proceedings under Article 226 of the Constitution of India, cannot be entertained at this stage. Exts.P9 and P10 are only notices issued under Section 25 (1) of the KVAT Act and the petitioner has an effective alternative remedy which requires him to file a reply before the adjudicating authority, and getting the matter adjudicated before the said authority in terms of the provisions of the KVAT Act. A writ petition, against notices in the nature of Exts.P9 and P10, will be entertained only if there is a serious flaw noticed in the matter of jurisdiction or if the notices have been issued beyond the period of limitation prescribed in the statute,

thereby depriving the authority of its jurisdiction to issue the notice itself. In as much as no such irregularity is brought to my notice in the instant case, I am of the view that the petitioner must be relegated to the course of getting the matter adjudicated before the 1st respondent. Accordingly, I dispose the writ petition with the following directions:

i. The 1st respondent shall consider Ext.P11 reply filed by the petitioner in response to Exts.P9 and P10 notices issued by him to the petitioner. In particular, the 1st respondent shall consider paragraph 17 of the said reply which reads as under:

> "17. If you are not accepting this reply and dropping the proposal for further re-assessment, you may kindly furnish to me the copies of the invoices, which you have referred to in Page-11 of the pre-assessment notice, afford opportunity to cross examine the persons concerned from whom the 38 invoices were recovered and comply with the judgment of the Hon'ble High Court referred to above."

ii. The 1st respondent shall consider the said request of the petitioner and, if he intends to place reliance on any documents or deposition of any person while deciding the case, he shall necessarily supply copies of the said documents and afford the petitioner an opportunity to cross examine such persons, prior to completing the adjudication.

iii. The petitioner shall produce a copy of the writ petition along with the copy of this judgment before the 1st respondent.

iv. The 1st respondent shall pass orders in the matter within a period of 4 months from the date of receipt of a copy of this judgment, after hearing the petitioner.

Subject to the aforesaid directions, the writ petition, in its challenge against Exts.P9 and P10 notices, is dismissed as not maintainable.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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