IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).NO. 1455 OF 2015 (F)

PETITIONER(S):

NRIPENDRAKUMAR SINGH,
DOOR NO.IX/52, NEAR JUMA MASJID,
ARAKKAL, CHALISSERY, PALAKKAD.

BY ADVS.SRI.N.MURALEEDHARAN NAIR,
SRI.V.K.SHAMUSUDHEEN.

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER,
   PATTAMBI - 679 306.

2. INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, PALAKKAD - 678 001.

BY GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).NO. 1455 OF 2015 (F)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT P1- TRUE COPY OF THE LICENCE OF CHALISERY GRAMA PANCHAYATH NO.204/13-14 DATED 22/02/2014 OF THE PETITIONER.

EXT P2- TRUE COPY OF THE APPLICATION FOR REGISTRATION FILED BEFORE THE 1ST RESPONDENT.

EXT P3- TRUE COPY OF THE SHOP INSPECTION REPORT DATED 19/09/2014.

EXT P4- TRUE COPY OF THE MODIFIED APPLICATION FILED BEFORE THE 1ST RESPONDENT.

EXT P5- TRUE COPY OF THE NATIONAL SAVINGS CERTIFICATE NO.33EF 079386 DATED 25.02.2014.

EXT P6- TRUE COPY OF THE NATIONAL SAVINGS CERTIFICATE NO.33EF 079387 DATED 11/03/2014.

EXT P7- TRUE COPY OF THE NATIONAL SAVINGS CERTIFICATE NO.77DD 307482 DATED 25.02.2014.

EXT P8- TRUE COPY OF THE NOTICE ISSUED BY THE1ST RESPONDENT DATED 22.12.2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.1455 of 2015 (F)

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Dated this the 29th day of January, 2015

JUDGMENT

The petitioner is a person, who proposes to commence business in pepper and arecanut. With a view to getting registration under the Kerala Value Added Tax Act, 2003 and Central Sales Tax Act, the petitioner had approached the respondents, through an application filed online, for registration certificates under the two enactments referred to above.

2. On consideration of the application submitted by the petitioner, and on noticing that the estimated turnover declared by the petitioner was an amount of Rs.15,00,000/-, the respondents by Ext.P8 notice directed the petitioner to furnish additional security by way of Bank guarantee for Rs.5,00,000/- and a security bond in Form 6 amounting to Rs.25,00,000/- with solvency in terms of Rule 19(1) of the KVAT Act, 2003, as a condition for the grant of registration.

3. The petitioner is aggrieved by the insistence of the respondents of such exorbitant amounts by way of additional security and hence approaches this Court, through the present writ petition, seeking a modification of the terms which have been stipulated as a condition for the grant of registration.

4. I have heard Sri.N.Muraleedharan Nair, 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 the petitioner is a person who proposes to commence business in commodities, that have been classified as evasion prone commodities within the State of Kerala. It is for the said reason that the respondents have insisted on additional security from the petitioner, as a condition for the grant of registration. No doubt, under the provisions of the KVAT Act, the respondent is empowered to insist on additional security from persons like the petitioner, who propose to commence business in evasion prone commodities. There is a necessity, however, of striking a balance between protecting the interests of the revenue, on the one hand, and the interest of the dealer, who proposes to commence business in the State. In the instant case, the petitioner has declared that the turnover that he expects to achieve in the first year of business is Rs.15,00,000/-. The estimation that is to be done by the respondents, for the purpose of demanding additional security from a dealer proposing to do business in evasion prone commodities, must necessarily take into account the declaration given by the dealer in question as to

the expected turnover in the forthcoming assessment year. No doubt, an estimation cannot be done with mathematical exactitude and hence, the respondent authorities would have to work out a reasonable formula for the demand of additional security. The amounts demanded must be a reasonable, in that it should be such that a new entrepreneur, commencing business activities, would be able to provide. In the instant case, in the notice issued to the petitioner, I do not see such an exercise having been done by the respondents. Taking into account, the declaration of the petitioner, therefore, I feel that the writ petition can be disposed with the following directions with regard to the additional security to be demanded from the petitioner :

> (i) The petitioner having declared an estimated turnover of Rs.15,00,000/- for the first year of business, the additional security to be demanded from the petitioner can be quantified at 10% of the estimated turnover declared by the petitioner. This is arrived at by taking into account the fact that the rate of tax applicable to the said commodities, is presently 5% advalorem.
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> (ii) The petitioner shall pay an amount of Rs.1,50,000/- towards additional security demanded by the respondents as a condition for the grant of registration. This amount will be over in addition to the security already furnished by the petitioner and the other formalities to be complied with in connection with the

grant of registration.

(iii) The petitioner shall also file an undertaking before the registering authority to the effect that he will intimate the registering authority, when his turnover crosses 90% of the limit declared by him in his declaration. This is for the purposes of enabling the registering authority to revise the additional security collected from the petitioner at that stage, if it is so required.

(iv) It is made clear that, if the petitioner commits default in any of the aforesaid conditions, he will lose the benefit of this judgment and the respondents will be free to proceed against the petitioner for demand of any amount towards the additional security in accordance with the provisions of the KVAT Act/CST Act.

The writ petition is disposed with the above directions.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/29/01/