IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 1837 of 2015 (D)

PETITIONER(S)/PETITIONER:
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M/S.FEDERAL HOUSE CONSTRUCTION CO-OP.SOCIETY LTD,
ALUVA, REPRESENTED BY ITS SECRETARY, GEORGE P.MATHAI.

BY ADVS.SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SHANMUGHAM D. JAYAN
SRI.SANTHOSH P.ABRAHAM
SMT.P.K.MAYA DEVI

RESPONDENT(S)/RESPONDENTS:
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1. **THE INTELLIGENCE OFFICER (IB),**
   COMMERCIAL TAXES, MATTANCHERY AT MINI CIVIL STATION
   ALUVA-683101.

2. **THE COMMERCIAL TAX OFFICER(WC & LT),**
   DEPT.OF COMMERCIAL TAXES, MATTANCHERRY-682002.

3. **THE INSPECTING ASST.COMMISSIONER,**
   DEPT.OF COMMERCIAL TAXES, MATTANCHERY-682002.

4. **STATE OF KERALA,**
   REPRESENTED BY ITS FINANCE SECRETARY, SECRETARIAT
   THIRUVANANTHAPURAM-695001.

R BY GOVERNMENT PLEADER SMT.LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1837 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1 TRUE COPY OF THE IBM-1/R-111/14-15/OR-5/14-15 DATED 24-11-2014

EXT.P2 TRUE COPY OF THE JUDGMENT IN WP(C)23164 OF 2014 DATED 3-9-2014

EXT.P3 TRUE COPY OF THE REPLY DATED 19-9-2014

EXT.P4 TRUE COPY OF THE NOTICE NO.F(RR)293/14-15 DATED 6-1-2015.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1837 OF 2015 (D)

Dated this the 20th day of January, 2015

J U D G M E N T

The petitioner challenges Ext.P1 penalty order passed under the Kerala Value Added Tax Act. In the writ petition, the ground of challenge against Ext.P1 penalty order is that the 1st respondent, while passing the said order, did not advert to a decision that was relied upon by the petitioner in support of its contentions on merits. In my view, this is a matter that can be agitated by the petitioner before the statutory authorities under the KVAT Act before whom a remedy by way of revision is provided for, against orders of penalty in the nature of Ext.P1. The apprehension of the petitioner, at this stage, however, is with regard to the continuation of recovery proceedings against him in the meanwhile. Ext.P4 is the Revenue Recovery notice that has been served on the petitioner pursuant to Ext.P1 order passed by the 1st respondent. In the writ petition, therefore, along with Ext.P1, Ext.P4 is also impugned.

2. I have heard Smt.S.K.Devi, the learned senior counsel appearing for the petitioner as also Smt.Lilly.K.T., the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that the petitioner has an effective alternate remedy under the KVAT Act against Ext.P1 order. I do not see any reason to interfere with Ext.P1 order in these proceedings under Art. 226 of the Constitution of India. Accordingly, I relegate the petitioner to the alternate remedy under the KVAT Act, of filing a revision petition against Ext.P1 order of the 1st respondent. The challenge in the writ petition, against Ext.P1 order is therefore rejected. To enable the petitioner to file the revision petition, and taking note of the fact that recovery steps have been initiated against the petitioner, I stay further proceedings pursuant to Ext.P4 for a period of two weeks, by which time, the petitioner shall approach the revisional authority under the KVAT Act through a revision petition filed against Ext.P1 order of penalty.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp