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. 1932 of 2015 (N)

PETITIONER :

BLUE DART EXPRESS LTD.,
REGISTERED OFFICE AT: BLUE DART CENTRE,
SAHAR AIRPORT ROAD, ANDHERI (E), MUMBAI - 400 099,
AND BRANCH OFFICE AT: 40/6785, TD ROAD,
COCHIN - 682 035, REPRESENTED BY ITS BRANCH MANAGER,
MR.MADHUSOODHANAN NAIR.R.

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMT.G.MINI
SRI.P.S.SREE PRASAD

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
MINISTRY OF FINANCE,
THIRUVANANTHAPURAM - 695 001.

2. COMMISSIONER,
DEPARTMET OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM - 695 001.

3. THE INTELLIGENCE OFFICER,
SQUAD NO.2, MATTANCHERRY AT KARUKUTTY - 682 001.

4. COMMERCIAL TAX OFFICER,
3RD CIRCLE, ERNAKULAM - 682 018.

R1 TO R4 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:

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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:	TRUE COPY OF CERTIFICATE OF SERVICE TAX REGISTRATION DATED 17/03/2005. (RELEVANT PAGES)
EXT.P2:	TRUE COPY OF THE SERVICE TAX RETURNS FOR THE PERIOD APRIL TO SEPTEMBER 2011 - 2012 DATED 25/10/2011.
EXT.P2(A):	TRUE COPY OF THE SERVICE TAX RETURNS FOR THE PERIOD OCTOBER TO MARCH 2011 - 2012 DATED 24/04/2012.
EXT.P2(B):	TRUE COPY OF THE SERVICE TAX RETURNS FOR THE PERIOD APRIL TO JUNE 2012 - 2013 DATED 23/11/2012.
EXT.P2(C):	TRUE COPY OF THE SERVICE TAX RETURNS FOR THE PERIOD JULY TO SEPTEMBER 2012 - 2013 DATED 26/04/2013 (REVISED)
EXT.P2(D):	TRUE COPY OF THE SERVICE TAX RETURNS FOR THE PERIOD OCTOBER TO MARCH 2012 - 2013 DATED 27/08/2013 (REVISED)
EXT.P3:	TRUE COPY OF THE ORDER SERVED ON THE PETITIONER DATED 13/05/2014 FOR THE FINANCIAL YEAR 2011 - 2012.
EXT.P4:	TRUE COPY OF THE ORDER CAPTIONED ERRATUM ISSUED AND SERVED ON 25/01/2014 FOR THE YEAR 2011 - 2012.
EXT.P5:	TRUE COPY OF THE ORDER DATED 13/05/2014 FOR THE FINANCIAL YEAR 2012 - 2013
EXT.P6:	TRUE COPY OF THE INTERIM ORDER IN WPC NO. 14129/2014 DATED 14/08/2014.
EXT.P7:	TRUE COPY OF THE AGREEMENT ENTERED INTO WITH M/S. WS RETAIL SERVICES PRIVATE LIMITED (IE FLIP-KART) DATED 17/08/2010.
EXT.P8:	TRUE COPY OF THE TERMS AND CONDITIONS WITH FLIPKART.COM DATED NIL.
EXT.P9:	TRUE COPY OF THE INTERIM ORDER DATED 23/05/2014 IN WPC NO. 31386/2013.
EXT.P10:	A TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT FOR THE FINANCIAL YEAR 2011 - 2012 DATED 07/10/2013.
EXT.P11:	A TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT FOR THE FINANCIAL YEAR 2012 - 2013 DATED 07/10/2013.

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EXT.P12: TRUE COPY OF THE REPLY DATED 07/12/2013 FILED BY THE PETITIONER FOR THE FINANCIAL YEAR 2011 - 2012.

EXT.P13: TRUE COPY OF THE REPLY FILED FOR THE FINANCIAL YEAR 2012 - 2013 DATED 07/12/2013.

EXT.P14: TRUE COPY OF THE COVERING LETTER DATED 23/01/2014 (FOR THE ASSESSMENT YEAR 2011 - 2012).

EXT.P15: TRUE COPY OF THE COVERING LETTER DATED 23/01/2014 (FOR THE ASSESSMENT YEAR 2012 - 2013).

EXT.P16: TRUE COPY OF THE BUDGET SPEECH (RELEVANT PORTION) ON INTRODUCING THE KERALA FINANCE BILL 2014 DATED 24/01/2014. (RELEVANT PAGES)

EXT.P17: TRUE COPY OF THE NOTICE DATED 15/10/2014 FOR THE FINANCIAL YEAR 2011 - 2012.

EXT.P18: TRUE COPY OF THE NOTICE DATED 15/10/2014 FOR THE FINANCIAL YEAR 2012 - 2013.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.1932 of 2015

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Dated this the 20th day of January, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P17 and P18 pre-assessment notices, that have been issued to the petitioner who is engaged in providing courier services, proposing to levy tax on amounts collected by the petitioner from customers to whom goods were delivered on cash on delivery basis. While the petitioner has raised various contentions in the writ petition against Exts.P17 and P18 notices, including objections with regard to the jurisdiction of the 4th respondent to assess the business transactions of the petitioner to tax under the Kerala Value Added Tax Act, I am of the view that the writ petition, in its challenge against Exts.P17 and P18 pre-assessment notices, must necessarily fail. It is trite that a writ petition impugning a pre-assessment notice will be entertained by this Court only in limited circumstances such as where it is shown that the notices have been issued without jurisdiction, or have been issued beyond the period of limitation prescribed under the statute or where it is unambiguously clear that the notice is essentially an order in disguise, in that the assessing officer has already made up in his mind while issuing such notices. As I do not find any such irregularity in the present case, I am of the view that the petitioner must be relegated to the alternate remedy of filing a reply to the said notices and getting the matter adjudicated before the 2nd respondent. Thus, leaving it open to the petitioner to pursue the aforesaid course of action, of preferring replies to Exts.P17 and P18 notices and getting the same adjudicated before the 2nd respondent, I dismiss the writ petition in its challenge against the said notices.

2. Taking note of the apprehension raised by the learned counsel for the petitioner, however, I make it clear that the 4th respondent, while adjudicating the matter, shall specifically advert to the contentions of the petitioner regarding jurisdiction and render his findings on the said contentions separately while proceeding to consider the matter on merits. In otherwords, the orders to be passed by the 4th respondent on adjudication shall contain reasons to support his findings on jurisdiction, as well as on the merits of the case, including the applicability of the statutory provisions to the business activities of the petitioner. Subject to the above directions, the writ petition, in its challenge against Exts.P17 and P18 notices, is dismissed as not maintainable.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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