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. 2823 of 2015 (C)

PETITIONER(S) :

M/S.ALEX RESORTS HOTEL PVT. LTD.,
KUMARAKOM, KOTTAYAM DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM

RESPONDENT(S) :
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1. **THE STATE OF KERALA,**
   REPRESENTED BY SECRETARY DEPARTMENT OF COMMERCIAL TAXES,
   SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

2. **THE DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES DEPARTMENT, KOTTAYAM- 695 801.

3. **THE INTELLIGENCE OFFICER, SQUAD NO.IV,**
   OFFICE OF INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES DEPARTMENT, KOTTAYAM- 685 801.

   BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

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

Msd.

WP(C).No. 2823 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER DATED 12.08.2012 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE ORDER DATED 24.03.2014 IN APPEAL NO.KVATA/LTA NO.138/2012 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE NOTICE BEARING CR NO.17/10-11/09/10 REVISED DATED 24.11.2014 OF THE 3RD RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE OBJECTION DATED 16.12.2014 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE ORDER BEARING NO.CR 17/10-11 (2009-10) DATED 05.01.2015 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.2823 of 2015 (C)

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Dated this the 29th day of January, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 and Kerala Tax on Luxuries Act, 1976 (for short, 'KVAT Act and KTL Act'].

2. The challenge in the writ petition is against Ext.P5 order passed by the 3rd respondent under the KTL Act. In the writ petition, the petitioner impugns Ext.P5 order on the ground that, the said order was passed ignoring the directions given by the 2nd respondent in an earlier round of litigation, when the 2nd respondent had remanded the matter, after making observations in favour of the petitioner with regard to the existence of suppression for the purposes of imposition of penalty. Although, various other contentions have been raised in the writ petition against Ext.P5 order, I am of the view that the petitioner has an effective alternative remedy against Ext.P5, by way of filing an appeal before the 2nd respondent. It is trite that, normally this Court will be averse to entertaining writ petitions, against orders passed by the adjudicating authority under the various taxing statutes, and interference with such orders would only be in limited cases, such as where orders are passed by an authority who does not have jurisdiction to pass such orders or where the

order is passed disregarding the period of limitation prescribed under the statute or where there has been a blatant violation of the rules of natural justice while passing the said order. Since none of the said irregularities are noticed in the instant case, I am of the view that the petitioner must be relegated to the alternate remedy under the KTL Act against Ext.P5 order passed by the 3rd respondent. Thus, without prejudice to the rights of the petitioner to approach the 2nd respondent, through an appeal against Ext.P5 order, the present writ petition is dismissed as not maintainable.

It will be open to the petitioner to raise all contentions on merits against the findings in Ext.P5 order passed against him, in the appeal proposed to be filed before the 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/29/01/