IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 3177 of 2015 (V)

PETITIONER :

M/S.SEA FOOD INNOVATIONS,
CC.33/2852 CI, KANNETHU ROAD, CHAKKARAPARAMBU,
THAMMANAM P.O., COCHIN -682 032, ERNAKULAM DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER,
SRI. JOSEPH ZACHARIAH.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, 3RD CIRCLE,
   ERNAKULAM,COCHIN- 682 018

2. COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWER, KARAMANA, THIRUVANANTHAPURAM -695 033

3. STATE OF KERALA,
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM-695 001

R1 TO R3 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

WP(C).No. 3177 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1:	**COPY OF EXPORT LICENSE DATED 05.06.2012 ISSUED TO THE PETITIONER BY DIRECTOR GENERAL OF FOREIGN TRADE, GOVT OF INDIA**
EXT P1(A):	**COPY OF REGISTRATION CERTIFICATE ISSUED WITH EFFECT FROM 22.05.2006 UNDER THE KVAT AND CST ACT BY THE 1ST RESPONDENT**
EXT P2:	**COPY OF ANNUAL RETURN DATED 30.01.2014 E-FILED BY THE PETITIONER FOR THE YEAR 2012-13**
EXT P3:	**COPY OF AUDIT REPORT DATED 30.07.2014 ALONG WITH THE AUDITOR'S REMARK FOR FILING REVISED RETURNS IN ORDER TO RECONCILE WITH THE RETURNS AND BOOKS OF ACCCOUNTS FOR THE YEAR 2012-13 WHICH WAS AUDITED U/S.42 OF THE KVAT ACT**
EXT P3(A):	**TRUE COPY OF THE REQUEST DATED 30/07/2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT SEEKING FACILITY FOR REVISED RETURN AS PER SECTION 42(2) OF THE KVAT ACT, WHICH WAS ACKNOWLEDGED BY THE 1ST RESPONDENT ON 23/10/2014.**
EXT P4:	**COPY OF PRE-ASSESSMENT NOTICE DATED 05.11.2014 ISSUED BY THE PETITIONER FOR THE YEAR 2012-13, SERVED TO THE PETITIONER ON 12/11/2014 WHEREIN IT WAS ALLEGED THAT PETITIONER NOT FILED REVISED RETURNS.**
EXT P5:	**COPY OF REPLY DATED 19.11.2014 SUBMITTED BY THE PETITIONER BEFORE 1ST RESPONDENT, AGAINST EXT P4 POINTING OUT EXT P3 (A) REQUEST MADE U/S. 42(2) OF THE KVAT ACT, PENDING AT THE TIME OF ISSUANCE OF EXT P4 NOTICE.**
EXT P5(A)	**COPY OF EXPORT INVOICE NO.25/SI/12-13 DATED 20.03.2013 ALONG WITH CONECTED EXPORT DOCUMENTS PRODUCED BY THE PETITIONER ALONG WITH EXT P5 REPLY, BEFORE THE 1ST RESPONDENT**
EXT P6:	**COPY OF ASSESSMENT ORDER DATED 10.12.2014 PASSED BY THE 1ST RESPONDENT, FOR THE YEAR 2012-13 AFTER CREATING HUGE UNSUSTAINABLE AND ILLEGAL DEMANDS.**

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

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.3177 of 2015

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Dated this the 2nd day of February, 2015

J U D G M E N T

The petitioner impugns Ext.P6 order of the 1st respondent. Ext.P6 is an assessment order passed under the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act') for the assessment year 2012-2013. In the writ petition, the petitioner impugns Ext.P6 on the ground that the said order was passed without taking note of the submission of the petitioner, that there were mistakes that had crept into the annual return filed by him and a request was pending before the authority for effecting a revision of the return so filed. On a perusal of Ext.P6 order, however, I find that while passing the said order, the 1st respondent has considered the reply filed by the petitioner, to the notice issued to him under Section 25(1) of the KVAT Act, and taken note of the objections of the partitioner, which are substantially the same as those that formed the basis for the requests for revision of returns. The 1st respondent, thereafter, gave relief to the petitioner in respect of some of the invoices that were relied upon by the petitioner, and disallowed some of the other claims of the petitioner. Thus, it is not a case where the petitioner was prejudiced by the refusal of the respondents to permit him to revise the returns that he had already filed. The objections that were filed by the petitioner were duly considered by the 1st respondent, and reasons given for disallowance in respect of the other objections raised by the petitioner. In that view of the matter, I feel that the petitioner, if he is aggrieved by Ext.P6 order, has an alternate remedy by way of an appeal under the KVAT Act. The present case is not one where this Court should interfere with the order of assessment passed by the assessing authority under the KVAT Act. In the instant case, there is no irregularity with regard to the jurisdiction of the 1st respondent in passing Ext.P6 order, and further, it has not been demonstrated that the order has been passed in violation of the rules of natural justice or by ignoring the statutory period of limitation under the KVAT Act. Thus, leaving it open to the the petitioner to pursue his alternate remedy under the KVAT Act against Ext.P6 order, this writ petition is dismissed as not maintainable.

Counsel for the petitioner would submit that there is a possibility that recovery steps may be initiated against him for recovery of the amounts confirmed by Ext.P6 order, during the time it takes for preferring the appeal as directed in this judgment. Taking note of the said submission, I direct that recovery steps for recovery of the amounts confirmed against the petitioner by Ext.P6 order, shall be kept in abeyance for a period of two weeks so as to enable the petitioner to approach the appellate authority under the KVAT Act.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/