IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 3187 of 2015 (W)

PETITIONER :

M/S. RIVER VIEW BAR & RESTAURANT,
THODUPUZHA, REPRESENTED BY ITS MANAGING PARTNER,
SONY THOMAS.

BY ADVS.SMT.S.K.DEVI
SRI.M.RAJ MOHAN

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   DEPT. OF COMMERCIAL TAXES, 1ST CIRCLE,
   THODUPUZHA- 685 584

2. **THE DEPUTY COMMISSIONER (APPEALS),**
   DEPT. OF COMMERCIAL TAXES, KOTTAYAM- 686 002

3. **THE INSPECTING ASST. COMMISSIONER,**
   DEPT. OF COMMERCIAL TAXES,
   IDUKKI AT KATTAPPANA -685 508

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 3187 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1: **TRUE COPY OF THE ORDER NO.0613 K 000007/06-07 DATED 13.08.2010**

EXT P2: **TRUE COPY OF THE APPELLATE ORDER NO. STA.47/2014 (OLD NO.386/2011) DC(A) EKM DATED 03.09.2014**

EXT P3: **TRUE COPY OF THE NOTICE NO.A7-507/2014 -15 DEMANDING FOR THE DUES FOR 2006-07**

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

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.3187 of 2015

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Dated this the 12th day of February, 2015

JUDGMENT

The petitioner who is an assessee under the Kerala General Sales Tax Act, and had opted to pay turnover tax on liquor in terms of Section 7 of the Act, is aggrieved by Ext.P2 order that was passed by the First Appellate Authority, in an appeal preferred by the petitioner challenging the assessment order for the assessment years 2006-2007. The contention of the petitioner in the writ petition is that, although the issue with regard to the addition of the opening stock in the first year of compounding has already been decided against the assessee by a Division Bench decision of this Court in **M/s.Sannidhan Bar and Restaurant, Kannur v. State of Kerala [(2010) (2) KHC 461]**, the aspect of limitation, in respect of the rectification proceedings taken by the respondents to rectify the assessment order for the first year of compounding, has still to be considered in the light of the judgment of this Court dated 21.10.2014 in W.P.(C).No.36210 of 2010 and connected cases. The challenge against the first appellate order is mounted solely on the ground that the First

Appellate Authority did not have the benefit of the said judgment of this Court.

2. I have heard Smt.S.K.Devi, the learned Senior counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I note that the order that is impugned in the writ petition is the order of the First Appellate Authority. The petitioner having already opted to pursue the statutory remedies under the Act, it would not be appropriate for this Court to interfere with the first appellate order at this stage of the proceedings. This is more so, because the petitioner has an effective alternate remedy by way of a further appeal before the appellate Tribunal under the Kerala Value Added Tax Act, to redress its grievance against Ext.P2. No doubt, it will be open to the petitioner to raise all the contentions raised in the writ petition before the appellate authority, in the appeals that are to be filed before the said authority. Thus leaving it open to the petitioner to approach the appellate Tribunal under the Kerala Value Added Tax Act to redress its grievances against Ext.P2 order of the First Appellate Authority, the writ petition in its challenge

against Ext.P2 order is dismissed.

Counsel for the petitioner would submit that there is a threat of recovery, pursuant to the revenue recovery notice issued to it. Taking note of the said submission, I make it clear that if the petitioner approaches the appellate Tribunal, through duly constituted appeals against Ext.P2 order, within a period of one month from the date of receipt of a copy of this judgment, then the appellate authority shall consider the appeals and pass orders thereon within a period of three months thereafter. Till such time as the appellate Tribunal passes orders in the appeal and communicates the same to the petitioner, the recovery steps pursuant to the revenue recovery notices issued to the petitioner shall be kept in abeyance.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/