IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 3524 of 2015 (M)

PETITIONER(S):

M/S. YOGESH TRADING COMPANY,
KOTTACHERY, KANHANGAD - 671 315
REPRESENTED BY ITS MANAGING PARTNER SRI. YOGESH PRABHU.

BY ADVS.SRI.T.M.SREEDHARAN (SR.)
SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENT(S):
----

1. THE INTELLIGENCE OFFICER (IB)
COMMERCIAL TAXES, THIRUVANANTHAPURAM - 695 001.

2. THE ASSISTANT COMMISSIONER
KVAT SPECIAL CIRCLE, COMMERCIAL TAXES
KASARAGOD - 671 121.

3. THE SPECIAL DEPUTY TAHSILDAR (RR)
HOSDURG TALUK, KASARAGOD DISTRICT, PIN - 671 121.

4. THE DISTRICT COLLECTOR
CIVIL STATION, KASARAGOD - 671 121.

5. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 3524 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1- **TRUE COPY OF THE APPLICATION DATED 14/10/2014 SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT ALONG WITH THE ACKNOWLEDGMENT.**

EXHIBIT-P2- **TRUE COPY OF THE NOTICE DATED 31/03/2014 ISSUED BY THE IST RESPONDENT.**

EXHIBIT-P3- **TRUE COPY OF THE ORDER DATED 05/03/2014 ISSUED BY THE 2ND RESPONDENT.**

EXHIBIT-P4- **TRUE COPY OF THE ORDER DATED 26/08/2014 ISSUED BY THE 2ND RESPONDENT.**

EXHIBIT P5- **TRUE COPY OF NOTICE NO.CR 215(5)03-04(02-03)IO(IB)II/TVPM DATED 2/2/15 ISSUED BY THE R1.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) No.3524 of 2015 (M)

..

Dated this the 9th day of February, 2015

JUDGMENT

The petitioner is aggrieved by the inaction on the part of the 1st respondent in considering his application for composition of offence under Section 47 of the Kerala General Sales Tax Act, 1963 (for short, 'KGST Act') with regard to the penalty that was imposed on the petitioner under Section 45(A) of KGST Act, for the assessment year 2002-2003.

2. Subsequent to the filing of the writ petition, the petitioner has produced Ext.P5 notice, that was served on him by the 1st respondent, wherein it is stated that, a hearing has been afforded to the petitioner on 09.02.2015 at 11.00 am. A perusal of the notice, however, indicates that, the 1st respondent has already decided to reject the application preferred by the petitioner for composition of the offence under Section 47 of KGST Act. It is under these circumstances that the petitioner approaches this Court for a direction to the 1st respondent to consider the application of the petitioner for composition of the offence, untrammeled by the contents in Ext.P5 notice issued to him.

3. I have heard Sri.T.M.Sreedharan, learned senior counsel appearing for the petitioner and Smt.Sobha Annamma Eappen,

learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that, in view of the direction contained in the Division Bench judgment of this Court dated 09.10.2013 in ST.Rev. No.47/2012, it would be incumbent upon the 1st respondent to consider the application for composition of the offence, submitted by the petitioner, on merits and in accordance with the provisions of the KGST Act. In Ext.P5 notice, that was issued to the petitioner by the 1st respondent, I find that, the 1st respondent has already made up his mind with regard to the outcome of the application submitted by the petitioner. Such a notice can serve no purpose, inasmuch as it is pre-conceived, and the petitioner cannot expect to receive a fair consideration of his case before the 1st respondent in a proceedings pursuant to the said notice.

5. Under those circumstances, I quash Ext.P5 notice and dispose this writ petition with direction to the 1st respondent to consider the application, submitted by the petitioner for compounding the offence under Section 47 of KGST Act for the year 2002-2003, on merits, with reference to the express provisions under the KGST Act, and after affording the petitioner an opportunity of hearing, within a period of two months from the date of receipt of a copy

of this judgment. To enable the 1st respondent to do this, I direct the petitioner to appear before the 1st respondent at 11.00 a.m. on 23/02/2015.

It is made clear that, coercive steps for recovery of the penalty amounts confirmed against the petitioner shall be kept in abeyance, till such time as orders are passed by the 1st respondent and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/10/02/