IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 4210 of 2015 (A)

PETITIONER(S) :

M/S.ST JOSEPH CLAY WORKS,
A REGISTERED PARTNERSHIP FIRM ,
PIRAROOR P.O., KALADY - 683574,
REP BY ITS MANAGING PARTNER, SHRI K I JOSEPH
AGED 51, S/O LATE K.I.ITTIARAH,
KANICHAI HOUSE, VYNTHALA,
PALAYAMPARAMBU, CHALAKUDY, THRISSUR DIST.

BY ADVS.SRI.DINESH R.SHENOY
SMT.K.K.JYOTHILAKSHMY
SRI.V.V.UNNIKRISHNAN
SRI.SANIL JOSE.

RESPONDENT(S) :

---

1. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES DEPARTMENT,
ERNAKULAM, MATTANCHERRY,
COCHIN - 682 002.

2. THE INTELLIGENCE OFFICER(IB)COMMERCIAL TAXES,
MATTANCHERY AT ALUVA MINI CIVIL STATION,
ALUVA, PIN-683 101.

BY SENIOR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

WP(C).No. 4210 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT. P1:- TRUE PHOTOCOPY OF PROCEEDINGS OF THE 2ND RESPONDENT, INTELLIGENCE OFFICER DTD 30/10/2014 WITHOUT ANNEXURES.

EXT. P2:- TRUE PHOTOCOPY OF THE JUDGMENT DTD 3/12/2014 IN WPC 31417/2014 HIGH COURT OF KERALA.

EXT. P3:- TRUE PHOTOCOPY OF PROCEEDINGS OF THE FIRST RESPONDENT DTD 7/1/2015.

EXT. P4:- TRUE PHOTOCOPY OF ORDER DTD 17/8/2010 ISSUED BY ASSISTANT COMMISSIONER(APPEALS)III , ERNAKULAM, AS APPEAL K VAT 3534/08.

EXT. P5:- TRUE PHOTOCOPY OF ASSESSMENT ORDER DTD 29/12/2010 BY THE COMMERCIAL TAX OFFICER II, ANGAMALY.

EXT. P6:- TRUE PHOTOCOPY OF APPELLATE ORDER DTD 10/1/2012 IN STA 396/2010 PASSED BY THE DEPUTY COMMISSIONER (APPEALS)I, ERNAKULAM.

EXT. P7:- TRUE PHOTOCOPY OF THE ENQUIRY REPORT DTD 18/6/2012 BY THE INTELLIGENCE OFFICER(IB)COMMERCIAL TAXES, THRISSUR.

EXT. P8:- TRUE PHOTOCOPY OF COMMON ORDER DTD 27/2/2012 PASSED IN TA(VAT) NOS 745/11.746/11, 747/11,748/11,749/11,750/11 AND 751/11 OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL.

EXT. P9:- TRUE PHOTOCPY OF THE STATEMENT OF COLOUR BILLS ISSUED BY THE PETITIONER FOR 2008-09.

EXT. P10:- TRUE PHOTOCOPY OF UN-NUMBERED APPEAL DTD 20/11/2014 FILED BY THE PETITIONER AGAINST EXT P1 ORDER.

EXT. P11:- TRUE PHOTOCOPY OF THE APPLICATION FOR STAY FILED IN THE UN-NUMBERED APPEAL DTD 20/11/2014

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4210 OF 2015 (A)

Dated this the 13th day of February, 2015

J U D G M E N T

The petitioner, who is an assessee under the KVAT Act is aggrieved by Ext.P3 conditional order of stay passed by the 1st respondent in a revision petition preferred against Ext.P1 penalty order. By Ext.P3 order, the 1st respondent has directed the petitioner to pay Rs.4 lakhs as a condition for the grant of stay of recovery of the balance amounts of penalty confirmed against the petitioner by Ext.P1 order. It is the case of the petitioner that the issue involved in the proceedings was essentially one relating to the rate of tax to be applied to the roofing tiles that were sold by the petitioner. It is his specific contention that for the assessment years 2003-04 and 2005-06, the assessments of the petitioner were completed by treating the item sold by the petitioner as kiln burnt earthen roofing tiles attracting tax at the rate of 4% and not as glazed tiles attracting tax at 12.5%. It is his contention that in Ext.P3 order, the 1st respondent does not consider the fact that the very same commodity was subject to tax at the lower rate for the earlier assessment years, and in the absence of any changed circumstances there was no justification for adopting a higher rate for the assessment year in question.

2. I have heard Sri.Dinesh R. Shenoy, the learned counsel appearing for the petitioner as also Smt.Sobha Annamma Eappen, the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that although Ext.P3 order contains reasons for the finding arrived at therein, the 1st respondent has not considered the effect of the earlier orders passed in the petitioner's own case by the Appellate tribunal on the issue of classification of the item sold by the petitioner. In that view of the matter, I feel that for an effective determination of a prima facie case on merits, it was incumbent upon the 1st respondent to consider the classification issue, as decided by the Appellate tribunal, and then arrive at a finding as to whether there was any requirement of the petitioner depositing any amount as a condition for the grant of stay. Insofar as this exercise has not been done by the 1st respondent in Ext.P3 order, I quash the same and remit the matter back to the 1st

respondent for a fresh consideration of the stay application, keeping in mind the observations made above. The 1st respondent shall pass fresh orders on the stay petition, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner and adverting to the relevant materials produced by the petitioner. Till such time as the 1st respondent passes orders as directed, and communicates the same to the petitioner, recovery action for recovery of the amounts pursuant to Ext.P1 order shall be kept in abeyance.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp