IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 4368 of 2015 (U)

PETITIONER(S) :

SATHEESH SANKAR, AGED 50 YEARS,
PROPRIETOR, SANKAR STUDIO, NEYYATTINKARA.

BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENT(S) :
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1. INTELLIGENCE OFFICER,
SQUAD NO.VII, COMMERCIAL TAXES,
THIRUVANANTHAPURAM AT NEYYATTINKARA - 695 121.

2. DEPUTY TAHSILDAR (REVENUE RECOVERY),
REVENUE RECOVERY OFFICE, NEYYATTINKARA - 695 121.

3. DEPUTY COMMISSIONER,
OFFICE OF THE DEPUTY COMMISSIONER,
THIRUVANANTHAPURAM - 695 001.

4. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SRI.SHYSON.P.MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 4368 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **COPY OF THE NOTICE NO. CR 31/2014-15 (4) DATED 16/07/2014 ISSUED BY THE 1ST RESPONDENT.**

EXT.P2: **COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER DATED 25/07/2014.**

EXT.P3: **COPY OF THE LETTER DATED 25/07/2014 ISSUED BY THE PETITIONER.**

EXT.P4: **COPY OF THE ORDER NO. CR 31/2014-15(4) DATED 05/08/2014 OF THE 1ST RESPONDENT.**

EXT.P5: **COPY OF THE DEMAND NOTICE NO. CR 31/2014-2015 (4) DATED 06/08/2014 OF THE 1ST RESPONDENT.**

EXT.P6: **COPY OF THE COMMUNICATION NO. B5-4454/2014/CT DATED 25/09/2014 OF THE 3RD RESPONDENT.**

EXT.P7: **COPY OF THE DEMAND NOTICE NO. D1/11247/2014 DATED 11/12/2014 OF THE 2ND RESPONDENT.**

EXT.P8: **COPY OF THE DEMAND NOTICE NO. DN 4723/2014 DATED 11/12/2014 OF THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS
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NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.4368 of 2015 (U)

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Dated this the 27th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 order that was passed by the 1st respondent in proceedings that were initiated against the petitioner under Section 70(a) of the Kerala Value Added Tax Act, 2003.

2. The facts in the writ petition would show that, consequent to an incident that took place whereby a crowd, that was assembled near the premises of a dealer where the respondent authorities had gone to conduct an inspection along with some officers, assaulted the officers of the commercial tax department, an enquiry was held, and proceedings initiated against the petitioner for imposition of penalty under Section 70(a) of the KVAT Act. It is the definite case of the respondents that, the petitioner was an active member of the crowd that had assembled and he was instrumental in encouraging others to assault the officers who had gone to the dealers premises for inspection. In the adjudication that followed, Ext.P4 order was passed by the 1st respondent who, incidentally, was also present at the premises, along with the officers who had been assaulted.

3. The contention of the petitioner in the writ petition, therefore, is

that while the proceedings under Section 70(a) of the KVAT Act itself was without jurisdiction, the 1st respondent was also a person who was not competent to pass orders in the matter inasmuch as he was an interested person, and any order passed by him would be vitiated on account of bias.

4. I have heard Sri.S.Vinod Bhat, learned counsel for the petitioner and Sri.Shyson P.Manguzha, learned Government Pleader for the respondents.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that Ext.P4 order has been passed by the 1st respondent in accordance with Section 70(a) of the KVAT Act. Alhough, it is the case of the petitioner that, in terms of Section 70(a) of the KVAT Act, it was not open to the respondents to proceed against the petitioner who had not personally attacked any officer of the commercial tax department during the incident in question, I am not impressed with the said argument in as much as I am of the view that Section 70(a) of the KVAT Act would also authorise proceedings against a person, who although did not directly assault an officer, was nevertheless a part of the crowd that instigated certain others to assaut the officers in question. I am, however, pursuaded by the alternate submission of the learned

counsel for the petitioner, that the 1st respondent, who was actually present during the incident was an interested party and hence was not competent to pass orders in an adjudication against the petitioner under Section 70(a) of the KVAT Act. I am of the view that, Ext.P4 order passed by the 1st respondent would not inspire confidence in an assessee, inasmuch as an element of bias cannot be ruled out when orders such as Ext.P4, are passed by persons who are interested in the proceedings. Taking note of the said submission of the learned counsel for the petitioner, therefore, I had instructed the learned Government Pleader to furnish the name of another officer, who would be in a position to decide the issue impartially. The learned Government Pleader has since produced a letter from the office of the Deputy Commissioner (Intelligence) indicating that the Inspecting Assistant Commissioner (IB), Thiruvananthapuram can be deputed to hear and dispose of the proceedings initiated against the petitioner under Section 70(a) of the KVAT Act.

6. Taking note of the aforesaid submission of the learned Government Pleader, I dispose the writ petition by quashing Ext.P4 order and directing the Inspecting Assistant Commissioner (IB), Thiruvananthapuram to consider the case against the petitioner in file No.CR.31/14-15 afresh, and pass orders thereon within two months from the date of receipt of a

copy of this judgment, after affording the petitioner an opportunity of being heard.

7. To enable the said officer to do this, I direct the petitioner to appear before the Inspecting Assistant Commissioner (IB), Thiruvananthapuram at 11 a.m. on 16.03.2015.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/02/03/