IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 4450 of 2015 (E)

PETITIONER(S):

M. ANWAR, AGED 63 YEARS,
PROPRIETOR, PALAKKAD TIBERS, VCM SHOPPING COMPLEX
OLAVAKKODE, PALAKKAD.

BY ADVS.SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENT(S):
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1. **FAST TRACK TEAM,**
   HEADED BY INSPECTING ASSISTANT COMMISSIONER, CHITTUR,
   PALAKKAD - 678 001.

2. **COMMERCIAL TAX OFFICER,**
   SECOND CIRCLE, PALAKKAD- 678 001.

3. **COMMISSIONER OF COMMERCIAL TAXES,**
   THIRUVANANTHAPURAM - 695005.

R BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 4450 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE CIRCULAR NO. 24/2008 DATED 25/05/2008.

EXHIBIT-P2-TRUE COPY OF THE JUDGMENT IN W.P(C) 9512/2011.

EXHIBIT-P3-TRUE COPY OF THE ASSESSMENT ORDER DATED 30/09/2012.

EXHIBIT-P4-TRUE COPY OF THE ORDER DATED 04/12/2014 UNDER SECTION 43.

EXHIBIT-P5-TRUE COPY OF THE AREEAR NOTICE DATED 23/01/2005.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4450 OF 2015 (E)

Dated this the 26th day of February, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P3 order passed by the 1st respondent completing the assessment relating to the petitioner for the assessment year 2004-05 in terms of Section 17D of the Kerala General Sales Tax Act. The challenge against Ext.P3 is essentially that, while completing the assessment, the 2nd respondent has disallowed the concessional rate of 3% on the sales effected by the petitioner as covered by Form 18 declarations, for the sole reason that the buyer had not declared the sales as purchases in his accounts. The demand that is quantified against the petitioner on the basis of the said disallowance forms a substantial part of the demand that is raised consequent to Ext.P3 assessment order.

2. I have heard Sri.Premjit Nagendran, the learned counsel appearing for the petitioner as also Sri.Sudheesh Kumar.S., 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 in Ext.P3 order, the 1st respondent has disallowed the concessional rate of 3%

on the sales covered by Form 18 declaration on the premise that the buyer in question had not accounted the corresponding purchases. It is trite that if there is a discrepancy in the accounts of the buyer, that can be a reason for proceeding against the buyer in respect of unaccounted purchase turnover. The said lapse on the part of the buyer cannot be a reason to proceed against the petitioner, who had complied with the statutory requirements for the purposes of claiming the concessional rate of tax. Inasmuch as in Ext.P3 order, the 1st respondent does not advert to this relevant aspect, I find that Ext.P3 order is vitiated by a patent non-application of mind. Accordingly, I quash Ext.P3 order, as rectified by Ext.P4 order, and direct the 1st respondent to complete the assessment in relation to the petitioner for the assessment year 2004-05, after affording the petitioner an opportunity of hearing and after conducting an enquiry in the matter. To enable the 1st respondent to do so, I direct the petitioner to appear before the 2nd respondent at 11 a.m. on 5.3.2015.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp