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. 4474 of 2015 (H)

PETITIONER(S):

BHAT BROTHERS,
10/1006, MELEPALAYAM ROAD,
KOZHIKODE - 673 001,
REPRESENTED BY ITS PARTNER R.NARAYANA BHAT.

BY ADVS.SRI.R.RAMADAS
SRI.C.S.ARUN SHANKAR.

RESPONDENT(S):

1. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM - 695 033.

2. THE INTELLIGENCE OFFICER,
SQUAD NO.1,
OFFICE OF THE INSPECTING ASST. COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE-673 006.

BY SENIOR 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:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: TRUE COPY OF THE LETTER DATED 30/11/2012 FILED BY THE PETITIONER BEFORE THE COMMECIAL TAX OFFICER, 2ND CIRCLE, COMMERCIAL TAXES, KOZHIKODE.

EXT.P2: TRUE COPY OF THE STOCK REGISTER AS ON 31/03/2013.

EXT.P3: TRUE COPY OF THE ANNUAL RETURN TOGETHER WITH THE CLOSING STOCK INVENTORY FILED BY THE PETITIONER FOR TH YEAR 2012-13.

EXT.P4: TRUE COPY OF THE ANNUAL RETURN TOGETHER WITH THE CLOSING STOCK INVENTORY AS ON 31/03/2014 FILED ALONG WITH THE ANNUAL RETURNS FOR THE YEAR 2013-14.

EXT.P5: TRUE COPY OF THE RECEIPT DATED 09/05/2014 ISSUED BY THE KOZHIKODE MUNICIPAL CORPORATION FOR PAYMENT OF FEE FOR APPLICATION FOR CONSTRUCTION OF BUILDING.

EXT.P6: TRUE COPY OF THE SHOP INSPECTION REPORT (SIR) DATED 10/07/2014 ISSUED BY THE 2ND RESPONDENT.

EXT.P7: TRUE COPY OF THE NOTICE DATED 10/09/2014 ISSUED BY THE 2ND RESPONDENT U/S.67 OF THE ACT.

EXT.P8: TRUE COPY OF THE REPLY DATED 22/09/2014 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P9: TRUE COPY OF THE PENALTY ORDER DATED 23/01/2015 PASSED BY THE 2ND RESPONDENT U/S.67 OF THE ACT.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.4474 of 2015 (H)

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Dated this the 12th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P9 penalty order passed under Section 67 of the Kerala Value Added Tax Act, 2003, for the assessment year 2014 - 2015.

2. In the writ petition, the contention of the petitioner is essentially that, although he had submitted a detailed reply (Ext.P8) to Ext.P7 notice that was issued to him by the 2nd respondent, the 2nd respondent has not appreciated the objections raised, in their proper legal perspective and further the petitioner was not afforded a hearing before passing Ext.P9 order.

3. I have heard Sri.R.Ramadas, learned counsel for the petitioner and Smt.Sobha Annamma Eappen, learned Government Pleader for the respondents.

4. On consideration of the facts and circumstances of the case and submissions made across the Bar, I note that in Ext.P9 order, the 2nd respondent has specifically adverted to the various contentions raised by the petitioner in Ext.P8 reply and also noted that, while the dealer had appeared before him on 27.08.2014, he did not produce the books of accounts to show

that the quantity of stock that was found missing on the date of shop inspection had actually been accounted in the books of accounts. In that view of the matter, and taking note of the detailed discussions on the objections of the petitioner, in Ext.P9 order of the 2nd respondent, I am of the view that, this is a case where the petitioner should be relegated to the alternative remedy under the KVAT Act against Ext.P9 order. In my view, this is not a case that warrants an interference with Ext.P9 order in proceedings under Article 226 of the Constitution of India. Accordingly, leaving it open to the petitioner to pursue his remedies against Ext.P9 order before the revision authority under the KVAT Act, the present writ petition, in its challenge against Ext.P9 order, is dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/12/02/