IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 5034 of 2015 (D)

PETITIONER(S) :

M/S.A.M.MOHAMMED USMAN & BROTHER,
P.B.NO.2664, BROADWAY, COCHIN-682 031,
ERNAKULAM DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER,
SRI.A.M.RIYAZ USMAN.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S) :
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1. **ASSISTANT COMMISSIONER,**
   SPECIAL CIRCLE-I, COMMERCIAL TAXES, ERNAKULAM,
   THEVARA, COCHIN- 682 015.

2. **COMMISSIONER OF COMMERCIAL TAXES,**
   TAX TOWER, KARAMANA, THIRUVANANTHAPURAM-695 033.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **TRUE COPY OF ANNUAL RETURN DATED 28.05.2010 FOR THE YEAR 2009-10.**

EXT.P2: **TRUE COPY OF NOTICE DATED 14.09.2014 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT U/S.25 OF THE KVAT ACT FOR 2009-10.**

EXT.P3: **TRUE COPY OF REPLY DATED 08.10.2011 SUBMITTED BY THE PETITIONER AGAINST EXT.P2 NOTICE.**

EXT.P3(A): **TRUE COPY OF 'C' NO.1015025 SUBMITTED BEFORE THE 1ST RESPONDENT ALONG WITH EXT.P3 REPLY.**

EXT.P3(B): **TRUE COPY OF 'C' NO.1742635 SUBMITTED BEFORE THE 1ST RESPONDENT ALONG WITH EXT.P3 REPLY.**

EXT.P3(C): **TRUE COPY OF 'C' NO.1742636 SUBMITTED BEFORE THE 1ST RESPONDENT ALONG WITH EXT.P3 REPLY.**

EXT.P3(D): **TRUE COPY OF 'C' NO.82501 FOR RS.70,820/- SUBMITTED BEFORE THE 1ST RESPONDENT ALONG WITH EXT.P3 REPLY.**

EXT.P4: **TRUE COPY OF INVOICE NO.A578 DATED 13.05.2009 FOR RS.7,08,420/- ISSUED IN A TRANSIT SALES.**

EXT.P5: **TRUE COPY OF REVISED NOTICE DATED 29.10.2014 U/S.25(1)OF THE KVAT ACT ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT FOR 2009-10.**

EXT.P6: **TRUE COPY OF REPLY DATED 13.11.2014 SUBMITTED BY THE PETITIONER AGAINST EXT.P5 NOTICE.**

EXT.P7: **TRUE COPY OF ASSESSMENT ORDER DATED 16.12.2014 ISSUED TO THE PETITIONER ON 05.02.2015, BY THE 1ST RESPONDENT U/S/.25(1) OF THE KVAT ACT.**

EXT.P8: **TRUE COPY OF ASSESSMENT ORDER DATED 16.12.2014 ISSUED TO THE PETITIONER ON 05.02.2015,BY THE 1ST RESPONDENT U/R.6(5) OF THE CST RULES, WITHOUT ISSUING A NOTICE UNDER THE CST RULES.**

EXT.P9: **TRUE COPY OF MONTHLY RETURN DATED 05.10.2009 FOR THE MONTH OF AUGUST 2009.**

EXT.P10: **TRUE COPY OF NOTICE DATED 23.10.2013 U/R.6(5) TO THE CST RULES ISSUED TO THE PETITIONER, BY THE 1ST RESPONDENT FOR THE YEAR 2009-10, PROPOSING TO ASSESS INTERSTATE AND EXPORT SALES TO TAX AT HIGHER RATE.**

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EXT.P10(A): **TRUE COPY OF REPLY DATED 31.10.2013 SUBMITTED BY THE PETITIONER AGAINST EXT.P10 NOTICE DATED 23.10.2013.**

EXT.P11: **TRUE COPY OF DUPLICATE PORTION OF EXT.P3(D) 'C' FORM NO.82501 DATED 25.06.2009.**

RESPONDENT(S)' EXHIBITS
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NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.K. JAYASANKARAN NAMBIAR, J.

W.P.(C) No. 5034 of 2015-D

Dated this the 5th day of March, 2015

<u>J U D G M E N T</u>

The challenge in this writ petition is against Exts.P7 and P8 orders passed by the first respondent completing the KVAT and CST assessments of the petitioner for the assessment year 2009-2010. The challenge against Exts.P7 and P8 assessment orders in the writ petition is essentially that, while passing Ext.P7 order pertaining to the KVAT assessment, the first respondent did not give credit to the advance tax already paid by the petitioner for the said year. It is the case of the petitioner that, the non-crediting of advance tax paid by him for the assessment year resulted in an exaggerated statement of the balance tax payable by him, which would prejudice his right of appeal before the appellate authority. As regards Ext.P8 order, in the context of the CST Act, it is the contention of the petitioner that, while he had, in response to the pre-assessment notice, submitted Ext.P3 reply producing copies of 'C', the forms for the purpose of establishing that the transactions in question were interstate sales, which were taxable at the concessional rate of tax, the said aspect was not taken note of in Ext.P8 order that was passed by the first respondent while completing the CST assessment for the said year. It is the contention of the petitioner that, on account of non-consideration of Ext.P3 reply, the transactions in question have been excluded from the purview of the CST assessment, and included as local sales and assessed accordingly, under Ext.P7 order. According to the petitioner, this has resulted in an exorbitant demand of tax from him under the KVAT Act and denial of the concessional rate of tax as applicable under the CST Act.

2. I have heard Sri.Tomson T. Emmanual, learned counsel for the petitioner and Sri.S.Sudhish Kumar, the senior Government Pleader for the respondents.

3. On consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P7 order pertaining to KVAT assessment, the first respondent has not given credit to the advance tax payment effected by the petitioner for the assessment year in question. I note that the details with regard to the payment of advance tax had to be gathered from the KVAT software which would reveal the payments actually made by the petitioner. This apparently has not been done by the first respondent while passing Ext.P7 order. Further, in Ext.P7 order, many transactions, which according to the petitioner, would merit consideration under the CST assessment have also been included, which is also legally incorrect. As far as

Ext.P8 order is concerned, I find that the said order does not refer to Ext.P3 reply, that was submitted by the petitioner, in response to a pre-assessment notice served on him. In Ext.P3 reply, the petitioner had enclosed copies of the 'C' forms that were relevant for establishing his case on merit. Inasmuch as the said reply has not been considered by the first respondent while passing Ext.P8 order, the petitioner has been seriously prejudiced, in that, his claim for concessional rate of tax has not been considered on merits by the first respondent. Thus, I find that, both Exts.P7 and P8 orders of the first respondent are legally unsustainable. Accordingly, I quash Exts.P7 and P8 and direct the first respondent to complete the KVAT and CST assessments in relation to the petitioner for the assessment year 2009-2010 afresh, after considering the reply filed by the petitioner, together with all the materials that are produced by him to substantiate his contentions. The first respondent shall pass fresh orders as directed within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. To enable the first respondent to do so, I direct the petitioner to appear before the first respondent at 11 a.m. on 12th March, 2015. I make it clear that if there are any rectifiable defects in the 'C' forms produced by the petitioner before the first respondent, the first respondent shall consider the request of the petitioner for rectification of the said 'C' forms, and pass orders as directed only after permitting the petitioner to rectify the defects in those cases where he finds that a rectification can be effected.

The writ petition is disposed as above.

Sd/-

A.K. JAYASANKARAN NAMBIAR
JUDGE

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