IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

WP(C).NO. 5204 OF 2015 (A)

PETITIONER(S):

K.V. VISWANATHAN, MANAGING PARTNER,
M/S. KUNNATHUKALATHIL JEWELLERS,
CHANGANACHERRY, KOTTAYAM.

BY ADV. SRI.C.K.SREEJITH.

RESPONDENT(S):
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1. **ASSISTANT COMMISSIONER, KVAT SPECIAL CIRCLE,**
   COMMERCIAL TAXES DEPARTMENT,
   KOTTAYAM -686 001.

2. **DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES DEPARTMENT,
   KOTTAYAM- 686 001.

3. **INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES DEPARTMENT, KOTTAYAM -686 001.

4. **COMMISSIONER OF COMMERCIAL TAXES,**
   THIRUVANANTHAPURAM -695 001.

5. **PRINCIPAL SECRETARY TO GOVERNMENT, TAXES (B)**
   DEPARTMENT, THIRUVANANTHAPURAM -695 001.

6. **PRINCIPAL SECRETARY TO GOVERNMENT,**
   LAW DEPARTMENT, THIRUVANANTHAPURAM- 695 001.

7. **STATE OF KERALA,**
   REPRESENTED BY CHIEF SECRETARY,
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM- 695 001.

BY GOVT. PLEADER SRI.R. RANJITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).NO. 5204 OF 2015 (A)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT P1: TRUE COPY OF THE PERMISSION TO PAY COMPOUNDED TAX U/S 8(F) FOR 2009-10 ISSUED BY THE 1ST RESPONDENT VIDE NO.32050770232/2009-10/19.06.2009.

EXT.P2: TRUE COPY OF THE STOPPAGE OF THIRUVALLA BRANCH ON 31.03.2010 VIDE LETTER DATED 01.04.2010 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 30.04.2010.

EXT.P3: TRUE COPY OF THE APPLICATION FOR PERMISSION TO OPT PAYMENT OF TAX AT COMPOUNDED RATES U/S 8(F) FOR 2010-11 VIDE APPLICATION DATED 30.04.2010 FILED BY THE PETITIONER BEFORE 1ST RESPONDENT ON 30.04.2010.

EXT.P4: TRUE COPY OF THE PERMISSION US/S 8(F) FOR 2010-11 IN FORM NO.4DF IN NO. 32050770232/23.12.2010 ISSUED BY THE 1ST RESPONDENT.

EXT.P5: TRUE COPY OF THE PERMISSION U/S 8(F) FOR 2011-12 IN FORM NO.4DFIN NO. 32050770232/13/12/2011.

EXT.P6: TRUE COPY OF THE PERMISSION US/S 8(F) FOR 2012-13 IN FORM NO.4 DF IN NO.32050770232/04.08.2012.

EXT.P7: TRUE COPY OF THE ANNUAL RETURN FOR 2013-14 IN FORM NO.10 FIELD BY THE PETITIONER BEFORE 1ST RESPONDENT.

EXT.P8: TRUE COPY OF THE REVISED OPTION FOR 2013-14 IN FORM NO.1B DATED 25.03.2014 FIELD BY THE PETITIONER BEFORE 1ST RESPONDENT.

EXT.P9: TRUE COPY OF THE NOTICE U/S 25(1) NO.32050770232/2010-11/ 14.06.2013 ISSUED BY THE 1ST RESPONDENT.

EXT.P10: TRUE COPY OF THE PETITION DATED 19.11.2013 FILED BY THE PETITIONER BEFORE GOVT. OF KERALA.

EXT.P11: TRUE COPY OF THE OBJECTIONS TO THE PRE-ASST NOTICE VIDE LETTER DATED 20/06/2013 FILED BEFORE THE 1ST RESPONDENT.

EXT.P12: TRUE COPY OF THE BEST JUDGMENT ASST U/S 25(1) PASSED BY THE 1ST RESPONDENT FOR 2010-11 VIDE ORDER NO.32050770232/2010-11/31.01.2014.

EXT.P13: TRUE COPY OF THE DEMAND NOTICE IN FORM NO.12 FOR 2010-11 DATED 31.01.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

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EXT.P14: TRUE COPY OF THE PETITION DATED 26.11.2013 FILED BY THE TRADERS ASSOCIATION BEFORE THE GOVT. OF KERALA.

EXT.P15: TRUE COPY OF THE PETITION DATED 10/02/2014 FILED BY THE PETITIONER.

EXT.P16: TRUE COPY OF THE APPEAL MEMORANDUM IN FORM NO.29 DATED 12.04.2014 WITH GROUNDS OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P17: TRUE COPY OF THE PETITION DATED 12.03.2014 FILED BY THE PETITIONERS BEFORE THE HON. MINISTER FOR FINANCE, TVM.

EXT.P18: TRUE COPY OF THE RR DEMAND NOTICE FOR RECOVERY IN NO. A 5-335/13-15/21.03.2014 ISSUED BY THE 3RD RESPONDENT.

EXT.P19: TRUE COPY OF THE STAY ORDER ISSUED BY THE 5TH RESPONDENT AS PER ORDER NO.8108/B2/2014/TD DATED 22.04.2014.

EXT.P20: TRUE COPY OF THE PETITION DATED 07.01.2015 FILED BY THE PETITIONER BEFORE THE HON. MINISTER FOR FINANCE GOVT. OF KERALA ,TVM.

EXT.P21: TRUE EXTRACT OF PARA 227 OF THE BUDGET SPEECH FOR 2010-11 MADE BY THE HON. MINISTER FOR FINANCE ON THE FLOOR OF THE ASSEMBLY (RELEVANT PAGES).

EXT.P22: TRUE EXTRACT OF THE KERALA FINANCE BILL -2010- EXPLANATION-8 TO CLAUSE (I) OF THE SUB SECTION (F) TO SECTION -8 OF THE KVAT ACT-2003 (RELEVANT PAGES).

EXT.P23: TRUE EXTRACT OF THE AMENDMENT AS EXPLANATION -8 TO CLAUSE (1) OF THE SUB SECTION (F) SECTION -8 TO KVAT ACT-03 AS PER THE KERALA FINANCE ACT-2010 (RELEVANT PAGES).

EXT.P24: TRUE COPY OF THE STAY ORDER ISSUED BY THE 5TH RESPONDENT VIDE NO.1318/B2/2015/TD DATED 23.01.2015.

EXT.P25: TRUE EXTRACT OF THE SUB-SECTION (F) OF SECTION-8 TO KVAT ACT-03 AS PER KERALA FINANCE ACT-2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.5204/2015

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Dated this the 12th Day of June, 2015

J U D G M E N T

The petitioner as against assessment order, Ext.P12, preferred an appeal. Ext.P16 is the appeal. He did not press for a stay for the obvious reason that he had moved the Government. The Government by Ext.P24 order issued a direction to the fourth respondent that subject to payment of 30% of the dues within two months, the petitioner may be allowed to remit the balance in 10 instalments. The petitioner submits that he does not want the benefit of Ext.P24 order. He submits that in the light of explanation 3 to Section 8 (f)(i) of the KVAT Act-2003, he is entitled for reversal of assessment order.

2. In the facts and circumstances, the following directions are issued:

i. The petitioner shall file a fresh application for stay within two weeks from today.

ii. If such an application is filed, the Appellate Authority shall consider the same in the light of the arguments of the petitioner on the explanation 3 to Section 8(f)(i) of the KVAT Act-2003 and dispose the application within a further period of one month.

iii. To work out the above remedy, all revenue recovery proceedings are deferred till the disposal of the stay application.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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