IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 5301 of 2015 (K)
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PETITIONER(S) :

M/S.KUNHIKANNAN JEWELLERY,
(PRESENTLY KNOWN AS M/S.KRISHNA JEWELS),
BANK ROAD, KANNUR,
REPRESENTED BY ITS MANAGING PARTNER,
SHRI.C.V.RAVEENDRANATH.

BY SRI.T.M.SREEDHARAN (SENIOR ADVOCATE)
ADVS. SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENT(S) :
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1. **THE ASSISTANT COMMISSIONER (KVAT) - II,**
   SPECIAL CIRCLE, COMMERCIAL TAXES, KANNUR.

2. **THE STATE OF KERALA,**
   REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR.S

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 5301 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE NOTICE NO.32120254102/09-10 U/S.25(1) R.W.S 8(F)(II) DATED 18.12.2014 ISSUED BY THE FIRST RESPONDENT.

EXHIBIT P2: TRUE COPY OF NOTICE NO.32120254102/09-10 DATED 23.10.2014 FOR THE ASST. YEAR 2009-10 ISSUED BY THE FIRST RESPONDENT.

EXHIBIT P3: TRUE COPY OF NOTICE NO.32120254102/10-11 DATED 23.10.2014 FOR THE ASST. YEAR 2010-11 ISSUED BY THE FIRST RESPONDENT.

EXHIBIT P4: TRUE COPY OF COMMON REPLY DATED 25.11.2014 SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT.

EXHIBIT P5: TRUE COPY OF REPLY SUBMITTED BY THE PETITIONER ON 22.01.2015 TO THE FIRST RESPONDENT.

EXHIBIT P6: TRUE COPY OF ORDER NO.32120254102/09-10 DATED 07.02.2015 ALONG WITH DEMAND NOTICE PASSED BY THE FIRST RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.5301 of 2015 (K)

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Dated this the 19th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 order passed by the 1st respondent. The petitioner, who is an assessee dealing in jewellery business, was served with Ext.P1 notice issued under Section 25(1) r/w Section 8(f) (ii) of the Kerala Value Added Tax Act, 2003 [for short, 'the KVAT Act']. The proposal in Ext.P1 was twofold. Firstly, the petitioner was asked to show cause as to why the order permitting him to pay tax at compounded rates for the assessment year 2009 - 2010 should not be cancelled and secondly, why the assessment of the petitioner for the said year should not be completed in terms of Section 25(1) of the KVAT Act.

2. In reply to Ext.P1 notice, the petitioner by Ext.P5 reply, submitted detailed objections with regard to the proposal for estimation of the turnover for the purposes of assessment under Section 25(1) of the KVAT Act. In the said reply there is no objection to the proposal with regard to cancellation of the permission granted for payment of tax at compounded rates. In the adjudication that followed, the first respondent, after adverting to the contentions of the petitioner with regard to the estimation that was proposed for the purposes of assessment

under section 25(1) of the KVAT Act, found that there was no merit in the said objections and proceeded to cancel the order permitting the assessee to pay tax at compounded rates for 2009 - 2010, and complete the assessment under Section 25(1) of the KVAT Act, by arriving at a tax liability of Rs.4,29,72,498/-. Additional amounts were also demanded by way of interest on the said amount.

3. As already noted Ext.P6 order of the 1st respondent is impugned in the writ petition, inter alia on the ground that, it is vitiated by an error of jurisdiction in that the 1st respondent had not considered the issue as to whether the order, cancelling the permission granted to the petitioner for payment of tax at compounded rate, had been passed after due compliance with the statutory procedure.

4. I have heard Sri.T.M.Sreedharan, learned senior counsel for the petitioner and Sri.Sudheesh Kumar, learned Government Pleader for the respondents.

5. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that inasmuch as the petitioner had not raised any objection, as regards alleged non-compliance with the statutory procedure prior to the

cancellation of the order permitting the petitioner to pay tax at compounded rates for the assessment year in question, Ext.P6 order, to the extent it confirms the proposal in Ext.P1 notice to cancel the permission granted to the assessee to pay tax at compounded rates, cannot be said to be illegal. As regards the estimation that was done by the 1st respondent, Ext.P6 order refers to the objections of the petitioner and comes to a finding that the proposed estimation is in order. In my view, if the petitioner is aggrieved by the estimation done by the 1st respondent in Ext.P6 order, it is for the petitioner to contest the matter before the appellate authority under the KVAT Act in a duly constituted appeal against Ext.P6 order. This is not a case, warranting the interference with Ext.P6 order, in proceedings under Article 226 of the Constitution of India. Resultantly, leaving it open to the petitioner to approach the appellate authority under the KVAT Act, for redressal of his grievance against Ext.P6 order, I dismiss the writ petition in its challenge against Ext.P6 order.

6. The learned senior counsel for the petitioner would point out that, Ext.P6 order is a composite one that both, cancels the permission granted to the petitioner for paying tax at compounded rates in terms of Section 8(f)(ii) and also completes the assessment in accordance with Section 25(1) of the Act. It is

pointed out that, as per Section 8(f)(iii) of the KVAT Act, an order under 8(f) (ii) is appealable only to the Appellate Tribunal and the appeal against an order under Section 25(1) would lie before the Deputy Commissioner (Appeals). Taking note of the submissions of the learned senior counsel for the petitioner, I make it clear that, the petitioner will be free to file an appeal against that portion of Ext.P6 order, which cancels the permission granted to the petitioner for payment of tax at compounded rate, in an appeal before the Appellate Tribunal and impugn that portion, which deals with the assessment under Section 25(1) of the Act, in a duly constituted appeal before the first appellate authority under the Act. In the appeal to be filed before the Appellate Tribunal, against the order passed under Section 8(f)(ii), it will be open to the petitioner to raise the contentions with regard to non-compliance of the statutory provisions, prior to the passing of the order cancelling the permission granted for payment of tax at compounded rates. To enable the petitioner to prefer separate appeals as above, against the same order, the first respondent shall furnish two certified copies of Ext.P6 order to the petitioner.

It is made clear that, the petitioner shall approach the appellate authorities referred to above, through duly constituted appeals, within a period of one month from the date of receipt of a copy of this judgment. To enable him to do so, recovery proceedings for recovery of any amounts confirmed against the petitioner by Ext.P6 order shall be kept in abeyance for a period of one month from today.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/19/02/