IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 5782 of 2015 (W)

PETITIONER(S):

M/S.SHRIVENKATESHA HEAVY EQUIPMENTS,
BUILDING NO 29/1288-C
2ND FLOOR ABOVE STATE BANK OF INDIA,
NH-47, BYEPASS,
VYTTILA JUNCTION, KOCHI 19,
REPRESENTED BY ITS MANAGING PARTNER C.V GANESH.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON.

RESPONDENT(S):

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1. THE ASST. COMMISSIONER OF COMMERCIAL TAX ,
   SPECIAL CIRCLE-III, THEVARA,
   ERNAKULAM - 689 015.

2. INTELLIGENCE OFFICER(IB)-II,
   DEPARTMENT OF COCOMMERCIAL TAXES,
   ASRAMAM, KOLLAM - 691 002.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
   DEPARTMENT OF COMMERCIAL TAXES,
   TAX TOWERS, KILLIPALAM,
   KARAMANA P.O., THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

WP(C).No. 5782 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1	COPY OF DEALERSHIP AGREEMENT BETWEEN HYUNDAI CONSTRUCTION EQIPMENT & THE PETITIONER.
EXHIBIT P2	COPY OF RETURN FOR THE ASSESSMENT YEAR 2009 FILED BY THE PETITIONER.
EXHIBIT P2(A)	COPY OF RETURN FOR THE ASSESSMENT YEAR 2010 FILED BY THE PETITIONER.
EXHIBIT P3	COPY OF ASSESSMENT ORDER ISSUED BY THE COMMERCIAL TAX OFFICER, TRIPUNITHURA.
EXHIBIT P4	COPY OF PENALTY ORDER ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P4(A)	COPY OF PENALTY ORDER ISSUED BY THE 2ND RESPONDENT.
EXHBIIT P4(B)	COPY OF APPELLATE ORDER ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P5	COPY OF NOTICE ISSUED BY THE INSPECTING ASST. COMMISSIONER, KOLLAM.
EXHIBIT P5(A)	COPY OF NOTICE ISSUED BY THE INSPECTING ASST. COIMMISSIONER, KOLLAM.
EXHIBIT P6	COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
EXHIBIT P6(A)	COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
EXHIBIT P7	COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P7(A)	COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.
EXHBIIT P8	COPY OF LETTER SUBMITTED BY M/S. HYUNDAI, PUNE BEFORE THE 2ND RESPONDENT.
EXHBIIT P9	COPY OF INVOICE RAISED BY M/S. HYUNDAI, PUNE.
EXHBIIT P9(A)	COPY OF SALE INVOICE OF THE PETITIONER

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.5782 of 2015

Dated this the 2nd day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P7 and P7(a) orders of penalty that have been passed in relation to the petitioner for the assessment years 2009-2010 and 2010-2011 under the Kerala Value Added Tax Act. The contention of the petitioner in the writ petition is that, while passing the orders of penalty, the 2nd respondent did not advert to the fact that on an identical issue for the earlier year, the First Appellate Authority had allowed the appeal preferred by the petitioner against orders imposing penalty, that were similar to Exts.P7 and P7(a). It is also pointed out that, the assessment for the 1st year of business of the petitioner was also completed by accepting the stand taken by the 1st Appellate Authority in the penalty proceedings, that the transactions in question were sales in transit, that were not assessable in the hands of the petitioner. In Exts.P7 and P7(a) orders, this aspect is not taken into consideration by the 2nd respondent who proceeded to mechanically impose a penalty on the petitioner, by holding the transactions in question as local sales by disallowing the contention that they were actually sales in transit.

2. I have heard Sri Harisankar V. Menon, on behalf of the

petitioner and Sri.Sudheesh Kumar, learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstance of the case and the submissions made across the bar, I find that the issue, on the basis of which Exts.P7 and P7(a) order imposing penalty on the petitioner have been passed, is with regard to the nature of the transaction that resulted in the goods moving from the petitioner to the ultimate consignee within the State. While it has been the consistent case of the petitioner that the transactions in question were transitsales that qualified for exemption in terms of the CST Act, the stand of the Government is that, in as much as the end consignee was already known at the commencement of the transaction, the transaction from the petitioner to the consignee was a local sale that attracted tax in terms of the Kerala Value Added Tax Act. I note that a similar issue was raised in the previous year, and against an order of penalty, the petitioner had carried the matter in appeal before the 1st Appellate Authority who allowed the appeal by finding that the transactions in question were actually transit sales that did not attract tax at the hands of the petitioner. In my view, the 2nd respondent, while considering the issue of imposition of penalty in a subsequent year, could not have ignored the findings of the appellate authority for the earlier

year. No doubt, it is open to the 2nd respondent to distinguish the decision of the appellate authority. In the instant case, however, in Exts.P7 and P7(a) orders, the 2nd respondent does even refer to the said appellate authority's order. In that view of the matter, I quash Ext.P7 and P7(a) orders and direct the 2nd respondent to pass fresh orders after hearing the petitioner, and after considering the earlier order of the appellate authority on the issue in question. The 2nd respondent shall pass orders as directed within a period of two months from the date of receipt of a copy of this judgment. To enable the 2nd respondent to do that, I direct the petitioner to appear before the 2nd respondent at 11 am on 16.03.2015.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns