IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

WP(C).No. 6282 of 2015 (I)

PETITIONER:

MARSON DOMINIC, AGED 46,
S/O.P.L.DOMINIC, PROPRIETOR,
KOOL COMFORT INCORPORATION,
DOOR NO.10/124-A, N.H.47,
NETTOOR, KOCHI - 682 304.

BY ADV. SRI.C.K.GOVINDAN

RESPONDENT(S):
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1. **COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAXES, CIRCLE II,
   THRIPUNITHURA, PIN - 682 301.

2. **THE DEPUTY THASILDAR (REVENUE RECOVERY),**
   KANAYANNUR TALUK OFFICE, ERNAKULAM,
   COCHIN - 682 011.

3. **THE VILLAGE OFFICER,**
   MARADU VILLAGE, MARADU PO, PIN - 682 304.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 6282 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: **TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 26.06.2007 UNDER THE KERALA VALUE ADDED TAX ACT, 2005.**

EXT.P2: **TRUE COPY OF THE BEST JUDGMENT ASSESSMENT NOTICE DATED 10.07.2014 ISSUED BY THE 1ST RESPONDENT.**

EXT.P3: **TRUE COPY OF THE BEST JUDGMENT ASSESSMENT ORDER DATED 02.08.2014 ISSUED BY THE FIRST RESPONDENT.**

EXT.P4: **TRUE COPY OF THE NOTICE OF DEMAND DATED 02.08.2014 ISSUED BY THE FIRST RESPONDENT.**

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 6282 of 2015
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Dated this the 26th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 order of assessment that was passed in respect of 'M/s. V-Kool Films' for the assessment year 2009-10, under the Kerala Value Added Tax Act, hereinafter referred to as 'KVAT Act'. The contention of the petitioner in the writ petition is that he has nothing to do with the assessee shown in Ext.P3 order, and that his business establishment goes by the name and style of “Kool Comfort Incorporation”. The challenge against Ext.P3 order, in the writ petition, therefore, is that the assessment order, that was served on him pertains to somebody else, and not to the petitioner.

2. I have heard the learned counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents as well.

3. The learned Government Pleader, on instructions, would submit that the penalty proceedings, based on which the assessment was finalised through Ext.P3 order, were initiated pursuant to a detention of goods at CTCP Walayar. It is pointed out, with reference to the files available with the respondents, that

the notices issued to the assessee, in connection with the detention, and in the proceedings that followed, were all received by the petitioner, who had accepted the notices in respect of the assessee shown in Ext.P3 order. It is also pointed out that the relevant order was also served on the petitioner. It is contended therefore, that the petitioner cannot now be heard to say, that he is not the assessee shown in Ext.P3 order.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that the petitioner cannot disown Ext.P3 order, that has been passed by the 1st respondent in proceedings under the KVAT Act. Further, inasmuch as there is no jurisdictional error pointed out in passing of Ext.P3 order, I am of the view that the petitioner's remedy against Ext.P3 order lies in an appeal to be filed against the said order, before the appellate authority under the KVAT Act. Resultantly, without pronouncing on the correctness of Ext.P3 order, I relegate the petitioner to his remedy of filing a statutory appeal against Ext.P3 order, before the 1st appellate authority under the KVAT Act.

The writ petition, in its challenge against Ext.P3 order fails and, is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das