IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C).No. 6734 of 2015 (N)

PETITIONER :

CEYLON BAKE HOUSE,
BROADWAY, ERNAKULAM,
(REPRESENTED BY MG. PARTNER
SRI.ABDUL RAZACK K.P.)

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR

RESPONDENTS :
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1. COMMERCIAL TAX OFFICER,
3RD CIRCLE, ERNAKULAM - 682 015.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVT. SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

R1 & R2 BY GOVT. PLEADER SRI. SUDHEESH KUMAR

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

Mn

WP(C).No. 6734 of 2015 (N)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1. TRUE COPY OF THE APPLICATION IN FORM 1D DATED 30.12.2010 FILED BY PETITIONER BEFORE THE 1ST RESPONDENT ALONG WITH COVERING LETTER.

EXHIBIT P2. TRUE COPY OF THE ANNUAL RETURN FOR 2010-11 FILED BY PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P3. TRUE COPY OF THE ANNUAL RETURN FOR 2011-12 FILED BY PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P4. TRUE COPY OF THE ANNUAL RETURN FOR 2012--13 FILED BY PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P5. TRUE COPY OF THE ANNUAL RETURN FOR 2013-14 FILED BY PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P6. TRUE COPIES OF THE RETURNS FOR THE 1ST & 2ND QUARTERS IN 2014-15 FILED BEFORE 1ST RESPONDENT.

EXHIBIT P7. TRUE COPIES OF THE NOTICES U/S 25(1) DATED 10.11.2014 FOR 2013-14 & 1ST AND 2ND QUARTERS IN 2014-15 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P8. TRUE COPY OF THE CLARIFICATON DATED 14.01.2008 IN C3/35160/2007/CT OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

EXHIBIT P9. TRUE COPY OF THE OPTION IN FORM 1B DATED 08.11.2014 FILED BEFORE 1ST RESPONDENT.

EXHIBIT P10. TRUE COPY OF THE DECISION OF THIS HON'BLE COURT IN JOHNSON & JOHNSON LTD. VS. ASST. COMMISSIONER REPORTED IN (2009) 23 VST 274 (KER).

EXHIBIT P11. TRUE COPIES OF REPLIES DATED 20.11.2014 FILED PURSUANT TO EXT.P7 BEFORE 1ST RESPONDENT.

EXHIBIT P12. TRUE COPIES OF THE ASSESSMENT ORDER BEARING NO.32071775308 DATED 05.02.2015 FOR 2013-14 AND THE 1ST & 2ND QUARTERS FOR 2014-15 ISSUED BY 1ST RESPONDENT.

EXHIBIT P13. TRUE COPY OF THE REJECTION ORDER OF COMPOUNDING APPLICATION BEARING NO.32071775308/14-15 DATED 05.02.2015 ISSUED BY 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.6734 of 2015 (N)

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Dated this the 3rd day of March, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P12 and P13 orders, whereby the assessments in relation to the petitioner for the period 2013- 2014 and two quarters of 2014 - 2015 have been completed under the Kerala Value Added Tax Act, 2003. Ext.P13 is an order passed against the petitioner, by rejecting the application filed by the petitioner claiming the benefit of the compounding scheme for the assessment year 2014 - 2015.

2. The case of the petitioner as regards Ext.P12 order is that the respondents have, while passing the orders, found that there was a delay in the petitioner preferring the application seeking permission for compounding, which delay could not be condoned as per the provisions of the Statute.

3. The contention of the petitioner is that, on account of the judgment of this Court in the case of **Johnson & Johnson Ltd. v. Assistant Commissioner (Assessment), Ernakulam & Others** **[(2009) 23 VST 274 (Ker)],** so long as the petitioner had paid the tax liability for the period in question, in accordance with the compounding provisions, and the said tax had been accepted by the respondents without demur, the delay

in filing the application seeking permission to compound, could not have been cited as a reason for making any differential demand of tax from the petitioner. The challenge against Ext.P13 is also premised on the same contention.

4. I have heard Sri.K.N.Sreekumaran, learned 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 the petitioner has an effective alternate remedy against Exts.P12 and P13 orders, by way of an appeal before the appellate authority under the KVAT Act. I do not see any reason to interfere with the said orders in these proceedings under Article 226 of the Constitution of India, especially since the petitioner has not made out a case with regard to an error of jurisdiction committed by the respondents while passing the orders impugned in the writ petition. Resultantly, without making any observations on the merits of Exts.P12 and P13 orders, I dismiss the writ petition in its challenge against the said orders, leaving it open to the petitioner to impugn the said orders before the appellate authority under the KVAT Act.

The learned counsel for the petitioner would submit that he can file the appeals against Exts.P12 and P13 orders within a period of two weeks from the date of receipt of a copy of this judgment. To enable the petitioner to do this, I stay further proceedings for recovery of the amounts demanded from the petitioner pursuant to Ext.P12 orders, for a period of two weeks from today.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/04/03/