

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 6797 of 2015 (Y)

PETITIONER:

**SREE RAMACHANDRAN ENTERPRISES,
TC 37/151, PADMA NAGAR, FORT,
THIRUVANANTHAPURAM-695 023,
REPRESENTED BY ONE OF ITS PARTNERS.**

**BY SMT.SUMATHY DANDAPANI (SENIOR ADVOCATE)
ADV. SRI.MILLU DANDAPANI**

RESPONDENT(S):

- 1. INTELLIGENCE OFFICER,
SQUAD NO.1, COMMERCIAL TAXES,
THIRUVANANTHAPURAM-695 002.**
- 2. DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
TAX TOWERS, KARAMANA,
THIRUVANANTHAPURAM-695 002.**
- 3. COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM-695 002.**
- 4. ASSISTANT COMMISSIONER,
SPECIAL CIRCLE, COMMERCIAL TAXES,
KARAMANA, THIRUVANANTHAPURAM-695 002.**

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 6797 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: TRUE COPY OF THE PROCEEDINGS ORDER NO.CR-20/SQD 1/TVM/08-09
DATED 30.9.09 ISSUED BY THE 1ST RESPONDENT.**
- P2 : TRUE COPY OF THE APPELLATE ORDER IN KVATA 239/09 DATED 31.8.2011.**
- P3 : TRUE COPY OF THE PROCEEDINGS ORDER NO.CR 74/13-14
(CR NO.20/2008-09) DATED 31.1.2015 ISSUED BY THE 1ST RESPONDENT.**
- P4 : TRUE COPY OF NOTICE DATED 9.2.2015 IN FORM NO.22 ISSUED BY THE
4TH RESPONDENT TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 6797 of 2015 ()

.....
Dated this the 4th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 order of penalty imposed by the 1st respondent for the assessment years 2007 - 2008 and 2008 - 2009 under the Kerala Value Added Tax Act, 2003. The contention of the petitioner in the writ petition is essentially that Ext.P3 order was passed by the 1st respondent, consequent to Ext.P2 order of the appellate authority, who had set aside Ext.P1 order of penalty passed earlier against the petitioner. While passing Ext.P3 order, however, the 1st respondent did not comply with the directions issued by the appellate authority in Ext.P2 order. It is submitted, therefore, that Ext.P3 order is vitiated, on account of a patent non-application of mind, as well as on account of non compliance with the directions in the remand order.

2.I have heard Smt.Sumathi Dandapani, the learned Senior counsel for the petitioner and Sri.Sudheesh Kumar, learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that in Ext.P3 order, the 1st respondent has dealt with the contentions of the

petitioner on merits and also referred to the directions issued by the appellate authority in Ext.P2 order. The petitioner, no doubt has a case that there are some aspects that have not been considered by the 1st respondent in Ext.P3 order. I find, however, that the issues pointed out by the petitioner are not such as would affect the jurisdiction of the 1st respondent in passing Ext.P3 order, and the petitioner can get the irregularities in the impugned order rectified through the appellate/revisional remedy provided under the statute. I feel that the petitioner has an effective alternate remedy against Ext.P3 order under the KVAT Act. Hence, without making any observations on merits of Ext.P3 order, I relegate the petitioner to the alternate remedy under the KVAT Act against Ext.P3 order. The writ petition, in its challenge against Ext.P3 order, fails and is accordingly dismissed.

4. The learned Senior counsel appearing for the petitioner would point out that, by Ext.P4 notice, the petitioner has been asked to appear before the 4th respondent in connection with assessment proceedings for the assessment year 2008 - 2009. The petitioner believes that the 4th respondent is the very same person, who passed Ext.P1 order of penalty against the petitioner for the assessment year in question. Taking note of the submission of the petitioner with regard to possible bias, I permit the petitioner

to approach the 3rd respondent with an appropriate application requesting for a transfer of the assessment files to an officer other than the officer who had adjudicated the penalty proceedings against the petitioner. On receipt of an application from the petitioner, the 3rd respondent shall consider the same on merits and take a decision thereon after hearing the petitioner.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/04/03/