IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 7179 of 2014 (V)

PETITIONER(S):

MALABAR GOLD ORNAMENT MAKERS (P) LTD.
RAM MOHAN ROAD, CALICUT
REPRESENTED BY DIRECTOR MUJEEB RAHAMAN.M.

BY ADVS.SRI.K.P.ABDUL AZEES
SMT.C.AMRITA
SMT.T.ARCHANA

RESPONDENT(S):
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1. ASSISTANT COMMISSIONER (SPECIAL CIRCLE-I)
COMMERCIAL TAXES, KOZHIKODE-673 004.

2. INTELLIGENCE OFFICER (IB)
OFFICE OF THE DEPUTY COMMISSIONER (INTELLIGENCE)
COMMERCIAL TAXES, KOZHIKODE-673 004.

3. THE COMMISSIONER
COMMERCIAL TAXES, THIRUVANANTHAPURAM-695 001.

4. STATE OF KERALA
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

BY SPECIAL GOVERNMENT PLEADER SRI.GEORGE MECHERIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 7179 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHBIT P1. **THE TRUE COPY OF ORDER NO.32110234942C/05-06 DATED 1/10/2011 BY THE ASSISTANT COMMISSIONER (SPECIAL CIRCLE), KOZHIKODE.**

EXHBIT P2. **THE TRUE COPY OF THE RECTIFIED ASSESSMENT ORDER PASSED BY THE ASSISTANT COMMISSIONER (SPECIAL CIRLCE) KOZHIKODE.**

EXHBIT P3. **THE TRUE COPY OF THE NOTICE DATED 26/2/2014 ISSUED BY THE ASSISTANT COMMISSIONER (SPECIAL CIRLCE) KOZHIKODE.L CIRLCE) KOZHIKODE.**

EXHBIT P4. **THE TRUE COPY OF THE PENALTY ORDER PASSED BY THE INTELLIFENCE OFFICER (IB) KOZHZIKODE.**

EXHBIT P5. **THE TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE HIGH COURT IN WPC NO.27842/2010 DATED 10/6/2013.**

EXHBIT P6. **THE TRUE COPY OF THE GOVERNMENT LETTER VIDE NO.28816/B3/2012/TD DATED 30/5/2013**

EXHBIT P7. **THE TRUE COPY OF THE LETTER NO.C1-19695/2012/CT DATED 12/6/2013 ISSUED BY THE COMMISSIONER**

EXHBIT P8. **THE TRUE COPY OF THE PETITION U/S.66 OF THE KERALA VALUE ADDED TAX ACT.**

EXHBIT P9. **THE TRUE COPY OF THE TDS CERTIFICATES IN FORM 16.**

EXHBIT P10. **THE TRUE COPY OF THE CIRCULAR VIDE VAT/CLARIFICATION/1006/202/ADMN-3/TRADE CIRCULAR-16T OF 2007 ISSUED BY COMMISSIONER OF SALES TAX, MAHARASHTRA.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7179 OF 2014

Dated this the 16th day of January, 2015

J U D G M E N T

In the writ petition, the petitioner challenges Ext.P3 notice issued to him under Section 6 (7) of the Central Sales Tax Act (hereinafter referred to as 'the CST Act') although the notice is erroneously shown as issued under Section 6 (5) of the CST Act. By the said notice, the respondents proposed a reassessment of the turnover under the CST Act for the assessment year 2005-2006. The facts in the writ petition would disclose that the assessment of the petitioner for the assessment year in question was initially completed under Section 6 (5) of the CST Act on 01.10.2011. Thereafter, Ext.P3 notice was issued on 26.02.2014. The principal contention of the petitioner in the writ petition is with regard to the issue of limitation, in that, according to the petitioner, Ext.P3 notice ought to have been issued within 4 years from the end of the year to which the assessment related. In the instant case, the assessment year in question is 2005-2006 and the period within which a notice under section 6 (7) could have been issued expired on 31.03.2010. As Ext.P3 notice is dated 26.02.2014, the same is barred by the express provision of limitation contained in Section 6 (7) of the CST Act.

2. I have heard Sri.K.P.Abdul Azees, the learned counsel for

the petitioner and Sri.George Mecheril, the learned Special Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the issue of limitation raised by the petitioner in the writ petition is covered in his favour by Ext.P5 judgment that is produced in the writ petition. It is also pointed out that, in an appeal preferred by the State against the said judgment, a Division Bench of this Court by judgment dated 11.07.2013 in W.A.No.1018 of 2013 affirmed the decision of the Single Judge. No doubt, the learned Special Government Pleader would submit that, against the Division Bench judgment referred to above, the State proposes to prefer an SLP before the Supreme Court. Be that as it may, I am of the view that the issue of limitation urged by the petitioner in the writ petition presently stands covered in his favour. Accordingly, following the aforesaid decisions of this Court, the writ petition is allowed on the issue of limitation.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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