IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No.6998 of 2015 (Y)

PETITIONER:

GERALD M.ALAPPAT,S/O.WARUNNY ALAPPAT,
AGED 44 YEARS,ALAPPAT HOUSE,MARKET VIEW ROAD,
IRINJALAKUDA P.O,MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.E.VIJIN KARTHIK

RESPONDENTS:
----

1. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES,IRINJALAKUDA.

2. INSPECTING ASSISTANT COMMISSIONER,
INTELLIGENCE,WEST FORT,THRISSUR.

3. THE VILLAGE OFFICER,IRINJALAKUDA VILLAGE,
MUKUNDAPURAM TALUK.

4. P.D.JAIMSON,S/O.P.I.DEVASSYKUTTY,AGED 53 YEARS,
PUDUKKADAN HOUSE, GANDHIGRAM,IRINJALAKUDAP.O.,
MUKUNDAPURAM TALUK,THRISSUR DISTRICT.

R1 TO R3 BY GOVT. PLEADER SRI.SUDHEESH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.6998 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:A COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER AND THE 4TH RESPONDENT.

EXT.P2:A COPY OF THE RECEIPT ISSUED BY THE DEPUTY SUPERINTENDENT OF POLICE,IRINJALAKUDA.

EXT.P3:A COPY OF THE COMPLAINT PREFERRED BY THE PETITIONER HEREIN BEFORE THE 1ST AND 2ND RESPONDENT.

EXT.P4:COPY OF THE NOTICE DATED 20.2.2014 UNDER SECTION 24 OF THE KERALA VALUE ADDED TAX ACT,2003.

EXT.P5:A COPY OF THE ORDER NO.32080989655 DATED 10.4.2014 OF THE 1ST RESPONDENT.

EXT.P6:THE ANSWER TO THE QUIRES ISSUED TO THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT BY THE OFFICE OF THE COMMERCIAL TAX OFFICE,IRINJALAKUDA.

EXT.P7:A COPY OF THE DEMAND NOTICE DATED 31.1.2015.

EXT.P8:THE DEMANDS NOTICE PRIOR TO ATTACHMENT OF LAND ISSUED TO THE PETITIONER DATED 31.1.2015.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.6998 of 2015

....

Dated this the 5th day of March, 2015

J U D G M E N T

The petitioner, who is a partner in a partnership firm, is aggrieved by the revenue recovery proceedings initiated against him, for realization of the Kerala Value Added Tax dues of the firm, for the period from April, 2013 to September, 2013. The facts in the writ petition would disclose that, an assessment for the said period was concluded in respect of the firm by Ext.P5 order dated 10.04.2014, and revenue recovery proceedings initiated against the firm and its partners, based on the said order. It is the contention of the petitioner that, on account of a rift between the partners of the firm, he was not kept informed of the business affairs of the firm, and hence, he was not aware of the passing of Ext.P5 order. It is his contention that being only one of the partners of the firm, the revenue recovery proceedings pursued against him alone, for the liability of the firm, is not legal.

2. I have heard Sri.Vijin Karthik, the learned counsel for the petitioner and Sri.Sudheesh Kemar, the learned Government Pleader for respondents 1 to 3. In the light of the order that I

propose to pass, I do not deem it necessary to issue a notice to the 4th respondent.

3. On a consideration of the facts and circumstances of the case and submissions made across the bar, and taking into account the plea of ignorance of the affairs of the firm, put forward on behalf of the petitioner, I dispose the writ petition with the following directions:

i. The petitioner's remedy against Ext.P5 order passed by the 1st respondent, is to file an appeal against the same, on behalf of the firm, before the appellate authority under the Kerala Value Added Tax Act. In order to prevent recovery from the petitioner, of amounts confirmed against the firm by Ext.P5 order, the petitioner would have to approach the appellate authority, with a stay petition seeking a stay of recovery pending disposal of the appeal.

It is the stand of the petitioner that he became aware of Ext.P5 order only when the said order was served to him by the respondents pursuant to a query under the Right to Information Act.

Taking note of the said submission of counsel for the petitioner, I permit the petitioner to prefer an appeal, together with a stay petition and petition for condonation of delay, before the appellate authority under the Kerala Value Added Tax Act within a period of one month from the date of receipt of a copy of this judgment.

To enable the petitioner to do this, I stay the recovery proceedings initiated through Exts.P7 and P8, as regards the petitioner and his property, for a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns