IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No.7324 of 2015 (M)

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PETITIONER:

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M/S.ALPHA INTERNATIONAL TRADERS,
XI/359,MANNARKKAD PANCHAYATH,
MANNARKKAD,REPRESENTED BY ITS
MANAGING PARTNER,MOHAMMED ASHRAF.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

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1. THE COMMERCIAL TAX OFFICER-I,
DEPARTMENT OF COMMERCIAL TAXES,
MANNARKKAD-678582.

2. STATE OF KERALA,REPRESENTED BY ITS SECRTARY,
TAXES DEPARTMENT,GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM-695001.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

**WP(C).No.7324 of 2015 (M)**
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**APPENDIX**

**PETITIONER'S EXHIBITS:**
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**EXHIBIT P1:COPY OF ASSESSMENT ORDER ISSUED BY THE IST RESPONDENT DATED 15.11.2013.**

**EXHIBIT P2:COPY OF ORDER ISSUED BY THE DEPUTY COMMISSIONER (APPEALS), KOTTAYAM DATED 10.4.2014.**

**EXHIBIT P3: COPY OF NOTICE ISSUED BY THE IST RESPONDENT DATED 27.12.2014.**

**EXHIBIT P4:COPY OF REPLY SUBMITTED BY THE PEITIONER BEFORE THE IST RESPONDENT DATED 22.1.2015.**

**EXHIBIT P5:COPY OF ORDER ISSUED BY THE IST RESPONDENT DATED 3.2.2015.**

**RESPONDENT'S EXHIBITS: NIL**
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**//TRUE COPY//**

**P.S. TO JUDGE**

**pk**

**A.K.JAYASANKARAN NAMBIAR, J.**
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**W.P.(C).NO.7324 OF 2015 (M)**
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**Dated this the 9th day of March, 2015**

**J U D G M E N T**

Challenge in the writ petition is against Ext.P5 order of assessment. The assessment completed in relation to the assessment year 2012-13 under the Kerala Value Added Tax Act. In the writ petition, Ext.P5 is impugned on the ground that the Assessing authority had not considered the specific case of the petitioner that, a similar issue which had been raised in an earlier assessment year against the petitioner, had eventually been decided in favour of the petitioner by the Appellate authority. It is submitted that although this matter was brought to the notice of the Assessing authority, the Assessing authority did not pass orders in favour of the petitioner for the assessment year in question.

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

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and in particular, the contention of the petitioner with regard to Ext.P5 order of assessment passed against him, I find that, the 1st respondent has, in Ext.P4 order, referred to the contentions of the petitioner with regard to the passing of the appellate order for the previous year, where an identical issue was decided in favour of the petitioner, but did not discuss the said aspect. I note, however, that this is a case where, although an opportunity was granted to the petitioner for appearing before the Assessing authority, the petitioner did not avail of the said opportunity, and produce any material before the said authority to substantiate his claims in the reply. It is in that backdrop that Ext.P5 order came to be passed against the petitioner. I am of the view that against Ext.P5 order, the petitioner has an effective alternate remedy by way of an appeal under the KVAT Act. Thus, without pronouncing on the merits of Ext.P5 order, I dismiss the writ petition, in its challenge against the same and relegate the petitioner to the alternate remedy of filing an appeal against Ext.P5 order before the Appellate authority, under the KVAT Act.

**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

prp