IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No. 12377 of 2010 (V)

PETITIONER:

BEERANKUNJU.M.S.,
BEENA TIMBER INDUSTRIES, MENOTH KUDIYIL,
MUDICKAL P.O., PERUMBAVOOR.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.T.G.ABHILASH

RESPONDENTS:

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1. THE ASSISTANT COMMISSIONER
COMMERCIAL TAXES, SPECIAL CIRCLE, PERUMBAVOOR.

2. INSPECTING ASSISTANT COMMISSIONER
DEPARTMENT OF COMMERCIAL TAXES, MUVATTUPUZHA.

R1-R2 BY SR.GOVERNMENT PLEADER SRI S.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.12377/10

PETITIONER'S EXTS:

EXT.P1:	COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2009-10 DT.4.12.2009.
EXT.P2:	COPY OF NOTICE IN FORM NO.10H DT.4.12.2009.
EXT.P3:	COPY OF REPLY GIVEN BY THE PETITIONER BEFORE THE 1ST RESPONDENT DT.21.12.09.
EXT.P4:	COPY OF DEMAND NOTICE UNDER SEC.OF THE R.R.ACT ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2008-09 DT.16.3.2010.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRAN, J

W.P.(C)No.12377 OF 2010

DATED THIS THE 1st DAY OF JUNE, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 ('KVAT Act' for short) on the file of the first respondent. He sold softwood planks to various dealers outside the State against 'C' Forms. The 'C' Form relating to interstate sale has to be given by the first respondent and the 'C' Form of one quarter has to be given before the expiry of the next quarter, as per the provisions of the Central Sales Tax Act ('CST Act' for short), failing which higher rate of tax at the rate of 12% would be levied.

2. Going by the averments in the writ petition, the petitioner was issued with Ext.P1 notice under Sections 31(5) and 68 of the KVAT Act, 2003 asking him to submit objections, if any, about the proposal to impose penalty of ₹23,980/- for the reason that a cheque bearing No.241349 dated 31.10.2009 issued by him for a sum of ₹11,990/- towards CST for the year 2009-2010 was returned by the Punjab National Bank, Perumbavoor Branch, for the reason 'insufficiency of funds', on 30.11.2009. Therefore, by

Ext.P1, the petitioner was directed to pay the cheque amount in cash and he was also imposed with penalty on account of dishonour of the cheque, which is an offence punishable under Section 68 of the KVAT Act. Ext.P1 was accompanied by Ext.P2 demand notice.

3. To Ext.P1 notice, the petitioner submitted Ext.P3 reply. According to the petitioner, he had given the cheque in question only as security as demanded by the assessing authority, on an understanding that the same will be presented only if 'C' form in relation to interstate sales are not filed in time. He has also contended that, in respect of the period ended on 30.9.2009, he need file 'C' Form only before 31.12.2009. All the 'C' Forms for prior periods had already been given and the entire tax under CST Act was paid in advance and therefore, the allegation in Ext.P1 notice that, the cheque was given towards CST for the year 2009-2010 is not correct.

4. The grievance of the petitioner highlighted in this writ petition is that, though he had submitted Ext.P3 reply to Ext.P1 demand notice, without finalising Ext.P1 notice based on Ext.P3 reply submitted by the petitioner, the second respondent has

issued Ext.P4 demand notice, demanding payment of the disputed tax of ₹11,990/- together with ₹480/- towards interest. It was in such circumstances, the petitioner has approached this Court in this writ petition seeking a writ of certiorari to quash Exts.P1, P2 and P4 notices and for other consequential reliefs.

5. By order dated 8.4.2010, this Court directed the respondents to maintain status quo for a period of two months, which order was not extended thereafter.

6. A counter affidavit has been filed on behalf of the first respondent justifying the penalty proposed in Ext.P1 and also the demand made in Ext.P4.

7. I heard arguments of the learned counsel for the petitioner and also the learned Senior Government Pleader appearing for the respondents.

8. The learned Senior Government Pleader on instructions submitted that due to certain reasons, the KVAT registration granted to the petitioner was cancelled with effect from 1.12.2009.

9. The materials on record indicate that though the petitioner has submitted Ext.P3 reply to Ext.P1 notice, the first

respondent is yet to pass final orders thereon. It was in the meantime the petitioner was issued with Ext.P4 demand notice demanding the disputed tax.

10. In such circumstances, the writ petition is disposed of as follows:

If the proceedings pursuant to Ext.P1 notice is yet to be finalised, the first respondent shall do necessary steps in this regard, as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of this judgment, with notice to the petitioner.

Sd/-
ANIL K.NARENDRAN,
JUDGE

dsn