IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 8528 of 2015 (M)

PETITIONER(S):

RASHTRA DEEPIKA LTD.,
DEEPIKA BUILDING, COLLEGE ROAD,
KOTTAYAM - 686 001.
REPRESENTED BY ITS DIRECTOR FR.MATHEW M.CHALIL.

BY ADVS.SRI.A.KUMAR
SMT.G.MINI(1748).

RESPONDENT(S):

1. UNION OF INDIA,
   REPRESENTED BY FINANCE SECRETARY,
   NORTH BLOCK, NEW DELHI - 110 001.

2. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY (TAXES),
   MINISTRY OF FINANCE, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM - 695 001.

3. COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWER, KILLIPPALAM,
   KARAMANA P.O.,
   THIRUVANANTHAPURAM - 695 002.

4. COMMERCIAL TAX OFFICER,
   FIRST CIRCLE, OFFICER OF THE DEPUTTY COMMISSIONER,
   COMMERCIAL TAXES,
   KOTTAYAM - 686 001.

5. SUPERINTENDENT OF CENTRAL EXCISE AND SERVICE TAX,
   KOTTAYAM RANGE,
   KOTTAYAM - 686 001.

R1 & 5 BY SRI.RANJITH JACOB KOSHY, SC, CENTRAL BOARD OF EXCISE,
BY SENIOR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN &
BY SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CB EXCISE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1. TRUE COPY OF THE REGISTRATION CERTIFICATE FOR THE NEWS PAPER RASHTRA DEEPIKA.

EXT.P1(A). TRUE COPY OF THE REGISTRATION CERTIFICATE FOR THE NEWS PAPER RASHTRA DEEPIKA.

EXT.P1(B). TRUE COPY OF THE CERTIFICATE OF REGISTRATION GRANTED BY REGISTRAR OF NEWS PAPER OF INDIA UNDER THE PRESS AND REGISTRATION OF BOOKS ACT, 1867 IN RESPECT OF THE PUBLICATION BUSINESS DEEPIKA.

EXT.P1(C). TRUE COPY OF THE CERTIFICATE OF REGISTRATION GRANTED BY REGISTRAR OF NEWS PAPER OF INDIA UNDER THE PRESS AND REGISTRATION OF BOOKS ACT, 1867 IN RESPECT OF THE PUBLICATION STHREE DHANAM.

EXT.P1(D). TRUE COPY OF THE CERTIFICATE OF REGISTRATION GRANTED BY REGISTRAR OF NEWS PAPER OF INDIA UNDER THE PRESS AND REGISTRATION OF BOOKS ACT, 1867 IN RESPECT OF THE PUBLICATION RASHTRA DEEPIKA CINEMA.

EXT.P1(E). TRUE COPY OF THE CERTIFICATE OF REGISTRATION GRANTED BY REGISTRAR OF NEWS PAPER OF INDIA UNDER THE PRESS AND REGISTRATION OF BOOKS ACT, 1867 IN RESPECT OF THE PUBLICATION KARSHKAN.

EXT.P1(F). TRUE COPY OF THE CERTIFICATE OF REGISTRATION GRANTED BY REGISTRAR OF NEWS PAPER OF INDIA UNDER THE PRESS AND REGISTRATION OF BOOKS ACT, 1867 IN RESPECT OF THE PUBLICATION KUTTIKALYUDE DEEPIKA.

EXT.P1(G). TRUE COPY OF THE CERTIFICATE OF REGISTRATION GRANTED BY REGISTRAR OF NEWS PAPER OF INDIA UNDER THE PRESS AND REGISTRATION OF BOOKS ACT, 1867 IN RESPECT OF THE PUBLICATION RASHTRA DEEPIKA CHILDRE'S DIGEST.

EXT.P2. TRUE COPY OF THE NOTICE DATED 19/11/20213.

EXT.P3. TRUE COPY OF THE NOTICE FOR THE ASSESSMENT YEAR 2010-11 DATED 01/11/2014.

EXT.P4. TRUE COPY OF THE NOTICE FOR THE ASSESSMENT YEAR 2011-12 DATED 01/11/2014.

EXT.P5. TRUE COPY OF THE NOTICE FOR THE ASSESSMENT YEAR 2012-13 DATED 01/11/2014.

EXT.P6. TRUE COPY OF THE REPLY DATED NIL.

EXT.P7. **TRUE COPY OF THE SERVICE TAX RETURNS FILED BY THE PETITIONER FOR THE PERIOD APRIL TO SEPTEMBER 2011.**

EXT.P8. **TRUE COPY OF THE SERVICE TAX RETURNS FILED BY THE PETITIONER FOR THE PERIOD OCTOBER 2011 TO MARCH 2012.**

EXT.P9. **TRUE COPY OF THE SERVICE TAX RETURNS FILED BY THE PETITIONER FOR THE PERIOD APRIL TO JUNE 2012.**

EXT.P10. **TRUE COPY OF THE SERVICE TAX RETURNS FILED BY THE PETITIONER FOR THE PERIOD JULY TO SEPTEMBER 2012.**

EXT.P11. **TRUE COPY OF THE SERVICE TAX RETURNS FILED BY THE PETITIONER FOR THE PERIOD OCTOBER 2012 TO MARCH 2013.**

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 8528 of 2015

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Dated this the 18th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P2 to P5 notices that have been issued to the petitioner invoking the provisions of the Kerala Value Added Tax Act, hereinafter referred to as 'KVAT Act'. Essentially the contention of the petitioner in the writ petition is that, notices proposing a levy of sales tax have been issued to the petitioner in respect of advertisements, that have been printed in journals and magazines, that are brought out by the petitioner. It is the case of the petitioner that, insofar as the activity of publishing advertisements in the journals and periodicals is a service activity, the same will not attract the levy of sales tax under the KVAT Act. It is also contented by the petitioner that, there is a jurisdictional error in the respondents issuing Exts.P2 to P5 notices, in that, the activity in question will not come under the purview of the KVAT Act, insofar as there is no deemed sale or activity of sale of slots involved. The writ petition, in its challenge against Exts.P2 to P5 notices, is premised on the aforesaid contentions.

2. I have heard Sri.A.Kumar, the learned counsel appearing for the petitioner, Sri.Renjith J. Koshy, the learned Standing Counsel appearing for the 1st and 5th respondents and also Smt. Sobha Annamma Eappen, the learned Government Pleader for respondents 2 to 4.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that although the petitioner has raised various contentions, inter alia, questioning the jurisdiction of the authority in issuing Exts.P2 to P5 notices, I am of the view that, insofar as Exts.P2 to P5 are only notices, that have been issued by the respondents under the KVAT Act, it is always open to the petitioner to respond to the said notices, with his objections, inter alia, with regard to the jurisdiction of the authority to issue the said notices. The writ petition, seeking an interference with a show cause notice issued by a taxing authority is, in my view, premature, especially when the authority has not had the opportunity of considering the objections of the petitioner with regard to jurisdiction.

Thus, without pronouncing on the merits of the contentions of the petitioner with regard to the legality of Exts.P2 to P5 notices, I dismiss the writ petition in its challenge against the said notices.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das