IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 9544 of 2015 (P)
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PETITIONER(S) :

K.V.VISWANATHAN, AGED 63 YEARS,
MANAGING PARTNER, M/S.KUNNATHUKALATHIL JEWELLERS,
CHANGANACHERRY, KOTTAYAM.

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S) :
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1. **ASSISTANT COMMISSIONER, KVAT SPECIAL CIRCLE,**
   COMMERCIAL TAXES DEPARTMENT, KOTTAYAM- 686 001.

2. **DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES DEPARTMENT, KOTTAYAM- 686 001.

3. **INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES DEPARTMENT, KOTTAYAM- 686 001.

4. **COMMISSIONER OF COMMERCIAL TAXES,**
   THIRUVANANTHAPURAM- 695 001.

5. **PRINCIPAL SECRETARY TO GOVERNMENT,**
   TAXES (B) DEPARTMENT, THIRUVANANTHAPURAM- 695 001.

6. **PRINCIPAL SECRETARY TO GOVERNMENT,**
   LAW DEPARTMENT, THIRUVANANTHAPURAM- 695 001.

7. **STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY,**
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM- 695 001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EPAEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 9544 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE REVISED OPTION FOR 2013-14 IN FORM:NO.1B DATED 27.03.2014 FILED BY THE PETITIONER BEFORE 1ST RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE OBJECTIONS TO THE PRE-ASST NOTICE VIDE LETTER DATED 20.06.2013 FILED BEFORE THE 1ST RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE BEST JUDGMENT ASST U/S 25(1) PASSED BY THE 1ST RESPONDENT FOR 2010-11 VIDE ORDER NO.32050770232/2010-11/31.01.2014.

EXHIBIT P4: TRUE COPY OF THE DEMAND NOTICE IN FROM NO.12 FOR 2010-11 DATED 31.01.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P5: TRUE COPY OF THE APPEAL MEMORANDUM IN FORM NO.29 DATED 11.03.2014 WITH GROUNDS OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE PETITION DATED 12.03.2014 FILED BY THE PETITIONER BEFORE THE HON. MINISTER FOR FINANCE, TVM.

EXHIBIT P7: TRUE COPY OF THE RR DEMAND NOTICE FOR RECOVERY IN NO.A5-335/13-15/ 21.03.2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P8: TRUE COPY OF THE PETITION DATED 07.01.2015 FILED BY THE PETITIONER BEFORE THE HON. MINISTER FOR FINANCE, GOVT. OF KERALA, TVM.

EXHIBIT P9: TRUE COPY OF THE ORDER ISSUED BY THE 5TH RESPONDENT VIDE NO. 1318/B2/2015/TD DATED 23.01.2015.

EXHIBIT P10: THE TRUE COPY OF THE PETITION FILED FOR THE NOT PRESSING THE STAY APPLICATION.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 9544 of 2015 (P)

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Dated this the 25th day of March, 2015

JUDGMENT

Against Ext.P3 assessment order under the Kerala Value Added Tax Act, 2003, the petitioner preferred Ext.P5 appeal before the 2nd respondent.

2. The facts in the writ petition would disclose that, on being served with a demand notice, the petitioner approached the State Government, seeking inter alia a stay of recovery of the amounts confirmed against him by Ext.P3 assessment order, pending disposal of the appeal by the 2nd respondent. While the State Government granted the petitioner a conditional stay, the petitioner was not able to comply with the said conditions. It is under those circumstances, and when confronted with recovery proceedings, that the petitioner had approached this Court through the present writ petition.

3. I have heard Sri.C.K.Sreejith, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar and in particular the

submission made by the learned counsel for the petitioner that, the petitioner can pay 30% of the demand confirmed against him by Ext.P3 assessment order, I dispose the writ petition with the following directions:

i. The 2nd respondent shall consider and pass orders on Ext.P5 appeal preferred by the petitioner, within a period of three months from the date of receipt of a copy of this judgment.

ii. On the petitioner remitting 30% of the amount confirmed against him by Ext.P3 assessment order on or before 20.04.2015, the further proceedings for recovery of amounts confirmed against the petitioner by Ext.P3 assessment orders, shall be kept in abeyance, till such time as the 2nd respondent passes orders in the appeal and communicates the same to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/27/03/