IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY,THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

W.P.(C).No.10175 of 2015 (V)

PETITIONER(S):-

M/S.MIL CONTROLS LIMITED,
MELADOOR P.O., MALA, THRISSUR,
REPRESENTED BY ITS SENIOR MANAGER - FINANCE - SUBHASH.S.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS.

RESPONDENT(S):-
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1. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE ASSISTANT COMMISSIONER - II,
   COMMERCIAL TAXES, SPECIAL CIRCLE, THRISSUR - 680 004.

3. THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, ERNAKULAM - 682 015.

4. THE INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, MINI CIVIL STATION, IRINJALAKUDA - 680 125.

R1 TO R4 BY GOVERNMENT PLEADER S.SUDHISH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

WP(C).No.10175 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:- TRUE COPY OF THE ASSESSMENT ORDER DATED 27.11.2014 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT PERTAINING TO THE ASSESSMENT YEAR 2008-09 UNDER THE KVAT ACT.

EXT.P2:- TRUE COPY OF THE APPEAL MEMORANDUM DATED 13.01.2015 (WITHOUT ANNEXURES) FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT, AGAINST EXT.P1 ORDER.

EXT.P3:- TRUE COPY OF THE STAY PETITION DATED 13.01.2015 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P4:- TRUE COPY OF THE STAY ORDER DATED 05.03.2015 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS:-
--- NIL.

Vku/- [true copy]

K. Vinod Chandran, J.

W.P(C) No.10175 of 2015-V

Dated this the 01st day of April, 2015

JUDGMENT

The petitioner is aggrieved with the conditional order passed at Exhibit P4.

2. It is to be noticed that the first appellate authority has considered the issue of the additions made on re-opening of assessment elaborately. However, what is relevant is the question of limitation put forth by the petitioner before the first appellate authority. Admittedly the re-opening of assessment was after the limitation provided under the statute.

3. The only contention of the State is that there is an order under Section 25B of the Kerala Value Added Tax Act, 2003 [for brevity “KVAT Act”], which extended the period for completion of assessment.

4. Though the learned Government Pleader produced the order across the Bar, the order does not indicate any notice having been issued to the assessee or the same having been passed after giving an opportunity of hearing to the assessee. In

such circumstance, *prima facie,* the question of limitation has to be considered by the first appellate authority and merely on the ground of an order passed under Section 25B of the Act, there cannot be a conditional order passed. Only in the circumstance of the question of limitation having been raised, which, *prima facie*, finds acceptance, this Court would direct the first appellate authority to consider the appeal on merits. Exhibit P4 would stand set aside. There shall be a stay till the appeal is disposed of. The observations herein are only of a *prima facie* nature and shall not bind the appellate authority.

Writ petition is allowed.

Sd/-
K. Vinod Chandran,
Judge

vku/

[true copy]