IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 10583 of 2015 (W)

PETITIONER :

M.SAJEEV, AGED 48 YEARS,
ANARKALI CHEMICALS, OTTUMALA, KATTADI P.O.,
KOTTARAKKARA, KOLLAM - 691537

BY ADV. SRI.V.DEVANANDA NARASIMHAM

RESPONDENTS :
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1. THE COMMERCIAL TAX OFFICER-II
   COMMERCIAL TAXES, KOTTARAKKARA, KOLLAM-691506

2. STATE OF KERALA
   REP BY THE SECRETARY TO TAXES, THIRUVANANTHAPURAM

3. THE TAHSILDAR, TALUK OFFICE, KOTTARAKKARA-691506

BY GOVERNMENT PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-10-2015 ALONG WITH WPC NO.18358/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 10583 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:- TRUE COPY OF THE TAX INVOICE DTD 12/11/2013 ISSUED BY SANDVIK ASIA PRIVATE LIMITED IN RESPECT OF THE EQUIPMENT SANDVIK CV 217 CRUSHER.

P2:- TRUE COPY OF THE TECHNICAL DATA OF SANDVIK VERTICAL SHAFT IMPACT CRUSHER AS PER BROCHURE.

P3:- TRUE COPY OF THE NOTICE ISSUED U/S.8(B)OF THE KVAT , 2003 DTD 10/12/2014 BY THE IST RESPONDENT TO THE PETITIONER.

P4:- TRUE COPY OF THE REPLY DTD 29/1/2015 FILED ALONG WITH A CERTIFICATE ISSUED BY THE SANDVIK ASIA PRIVATE LIMITED ALONG WITH FLOW CHART.

P5:- TRUE COPY OF THE ASSESSMENT ORDER DTD 21/3/2015 ISSUED BY THE IST RESPONDENT TO THE PETITIONER

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). Nos. 10583 & 18358 of 2015
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Dated this the 19th day of October, 2015

JUDGMENT

As the issues involved in both these writ petitions are the same, they are taken up together for consideration and disposed by this common judgment.

2. The challenge in both these writ petitions is against assessment orders that have been passed, re-fixing the tax that was to be paid by the petitioners on compounded basis, in respect of the metal crusher unit that was conducted by the petitioners. While the impugned assessment orders computed the liability of the petitioners, based on the provisions under the KVAT Act, dealing with payment of tax on compounded basis for metal crusher units, it is the specific contentions of the petitioners in the writ petitions that the production capacity of the Vertical Shaft Impactor machines should be re-fixed based on a trial run that is conducted in the premises and the assessment done thereafter by taking into account the actual production capacity as noticed in the trial run.

3. I have heard the learned counsel appearing for both the petitioners in both the writ petitions as also the learned Government Pleader for respondents in both the writ petitions.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that the challenge in the writ petitions against the assessment orders, i.e., Ext.P5 in WP(C) 10583 of 2015 and Ext.P9 in WP(C) 18358 of 2015, must necessarily fail, inasmuch as the assessment done based on the production capacity has to be completed based on the production capacity of the machines as determined in accordance with the statute. The prayers sought for by the petitioners in the writ petition, with regard to the conducting of a trial run and taking the production capacity of the machines as established in the trial run, cannot be acceded to. I also find that against the assessment orders, that are impugned in the writ petitions, the petitioners have an effective alternate remedy, by filing appeals before the appellate authority under the KVAT Act. Accordingly, while dismissing the writ petitions in their challenge against the assessment orders, I direct that, if the petitioners prefer duly constituted appeals under the KVAT Act, after complying with the statutory formalities, within a period of three weeks from the date of receipt of a copy of this judgment, then the appellate authority under the KVAT Act, shall consider the said appeals, on merits. To enable the petitioners to pursue the appellate remedy against the assessment orders that are impugned in the writ petition, I direct that recovery steps pursuant to the assessment orders impugned in the writ petition shall be kept in abeyance for a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /19.10.15