IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 14494 of 2015 (J)

PETITIONER(S):

SMT.LOVEGI SAJITH,
PROPRIETRIX, INTER DECORS, SREEKRISHNA TOWERS,
HILL PALACE ROAD, THRIPUNITHURA-682 301,
ERNAKULAM DISTRICT.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, 1ST CIRCLE, THRIPUNITHURA-682 301.

2. INTELLIGENCE OFFICER,
COMMERCIAL TAXES, SQUAD NO.1, EDAPPALLY,
KOCHI-682 024.

3. INSPECTING ASSISTANT COMMISSIONER (INTELLIGENCE),
COMMERCIAL TAXES, THEVARA, KOCHI-682 015.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 14494 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : **COPY OF SHOP INSPECTION REPORT NO.008288 DTD.20.6.2014 PREPARED BY 2ND RESPONDENT, RECORDING PHYSICAL STOCK AND RECOVERY OF CERTAIN DOCUMENTS OF THE PETITIONER.**

P2 : **COPY OF COMPOUNDING ORDER DTD.30.6.2014, U/S. 74 OF THE KVAT ACT, ISSUED TO THE PETITIONER ON 12.1.2015, BY THE 2ND RESPONDENT, FOR THE YEAR 2013-14.**

P2(A) : **COPY OF COMPOUNDING ORDER DTD.30.6.2014, U/S.74 OF THE KVAT ACT, ISSUED TO THE PETITIONER ON 12.1.2015, BY THE 2ND RESPONDENT FOR THE YEAR 2014-15.**

P3 : **COPY OF REQUEST FOR REVISED RETURN FACILITY U/S.22(10) FOR 2013-14, BASED ON EXT.P2 COMPOUNDING, MADE BEFORE 1ST RESPONDENT BY E-MAIL.**

P3(A) : **COPY OF REQUEST FOR REVISED RETURN FACILITY U/S.22(10) FOR THE MONTH JUNE 2014, BASED ON EXT.P2(A) COMPOUNDING, MADE BEFORE 1ST RESPONDENT BY E-MAIL.**

P4 : **COPY OF NOTICE DTD.21.2.2015 ISSUED TO THE PETITIONER BY 1ST RESPONDENT IN REJECTING EXT.P3 REQUEST, WITHOUT AN OPPORTUNITY OF PERSONAL HEARING.**

P4(A) : **COPY OF NOTICE DTD.21.2.2015 ISSUED TO THE PETITIONER BY 1ST RESPONDENT IN REJECTING EXT.P3(A) REQUEST, WITHOUT AN OPPORTUNITY OF PERSONAL HEARING.**

P5 : **COPY OF REQUEST DTD.28.2.2015 MADE BY THE PETITIONER, UNDER RIGHT TO INFORMATION ACT.**

P5(A) : **COPY OF INFORMATION GIVEN BY 3RD RESPONDENT UNDER RIGHT TO INFORMATION ACT.**

P6 : **COPY OF REPORTED JUDGMENT OF DIVISION BENCH OF THIS HON'BLE COURT IN COCHIN PLANTATIONS VS. STATE OF KERALA (7 KTR 318).**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.
****
W.P.(C) No.14494 of 2015
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Dated this the 3rd day of July, 2015

JUDGMENT

The petitioner is a dealer, was permitted to compound for the assessing years 2013-2014 and 2014-2015. Exts.P2 and P2(a) are the orders. Under Section 74 (1)(a) of the Kerala Value Added Tax Act (for short, "KVAT Act"), a compounding is completed only when tax and compounding fee are collected from the dealer. The proceedings were finalised on 30.6.2014. In terms of Section 22 (10) of the KVAT Act, where the proceedings for compounding is finalised under Section 74, on payment of tax due along with the compounding fee, the dealer may thereafter, file a revised return incorporating such turnover covered in such proceedings within a period of three months from the finalisation of such proceedings.

2. The core issue in this writ petition is regarding the date to be reckoned for the finalisation of such proceedings. The case of the petitioner is that she has received the order only on 12.1.2015 and she filed e-mail requests for revised return on

10.2.2015. Those were rejected by Exts.P4 and Ext.P4(a) stating that it were submitted out of time.

3. Learned counsel for the petitioner submits that since she received the order only on 12.1.2015, the option was submitted within the time and it cannot be returned or rejected stating that out of time.

4. On the other hand, the learned Government Pleader submits that the petitioner having paid the compounding fee on 30.6.2014 and the petitioner was aware of the finalisation of the proceedings on 30.6.2014. Therefore, it is submitted that the petitioner's option was out of time.

5. Section 22(10) of the KVAT Act reads as follows:

> “Where the proceedings referred to in the above sub-section are finalised under Section 74 on payment of tax due along with the compounding fee, the dealer may thereafter file a revised return incorporating such turnover covered in such proceedings within a period of three months from the finalisation of such proceedings and on the receipt of such return by the assessing authority, the assessment for the return period or periods shall, subject to the provisions of sections 24 and 25, deemed to have been completed:

> Provided that where a pattern of suppression is detected the assessing authority shall proceed with best judgment assessment in accordance with the provisions of sections 24 and 25, as the case may be."

6. It stipulates that the dealer has to file revised return before such turnover covered in the proceedings for compounding within three months from the finalisation of such proceedings. There are no other provisions to reckon three months as laid down in the provision. It is to be noted that no consequence has been provided, if the dealer fails to submit return within three months to forfeit the benefit under Section 74 of the KVAT Act. Thus the provision prescribing the period cannot be treated as mandatory. Therefore, even if the period is reckoned from the date of communication of the order, the option exercised by the dealer within three months thereon has to be construed within the time.

7. Learned Government Pleader points out that the petitioner has only paid the compounding fee and has not remitted the admitted tax due.

8. Learned counsel for the petitioner submits that since the tax due can only be paid along with return through online and

on account of rejection, she could not pay the tax.

Accordingly, the impugned orders are set aside and there shall be a direction to the first respondent to consider Exts.P3 and P3(a) in the light of the observations as above and permit her to file return. Needful shall be done within one month from the date of receipt of a copy of this Judgment.

The writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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