IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No.15839 of 2015 (D)

PETITIONER:

S.SANTHOSH,LEKSHMI,OMALLOOR P.O,
PATHANAMTHITTA-689 647.

BY ADVS.SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR
SMT.KALA G.NAMBIAR
SRI.K.AMAL NATH NAIK
SRI.ARJUN RADHAKRISHNAN NAIR
SMT.ANUSREE SURESH
SMT.DEEPTI SUSAN GEORGE

RESPONDENT'S:
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1. **THE INTELLIGENCE OFFICER (IB),**
   COMMERCIAL TAXES,PATHANAMTHITTA-689 645.

2. **COMMERCIAL TAX OFFICER (WC),**
   OFFICE OF DEPUTY COMMISSIONER,
   COMMERCIAL TAXES,PATHANAMTHITTA - 689 645.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.15839 of 2015 (D)

APPENDIX

PETITIONER'S EXHIBITS:

P1 - **A TRUE COPY OF THE APPLICATION FOR REGISTRATION.**

P2 - **A TRUE COPY OF THE NOTICE DATED 13.03.2015 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 67(1) OF THE KVAT ACT, 2003.**

P3 - **A TRUE COPY OF THE REPLY TO THE 1ST RESPONDENT DATED 24.03.2015.**

P4 - **A TRUE COPY OF THE LETTER DATED 24.03.2015 TO THE 2ND RESPONDENT.**

P5 - **A TRUE COPY OF THE NOTICE DATED 27.03.2015 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

pk

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.15839 of 2015

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Dated this the 2nd day of June, 2015

JUDGMENT

The petitioner has been booked for offence under Section 67 (1) of the Kerala Value Added Tax Act, 2003 (for short, the "KVAT Act". Ext.P2 is the notice dated 13.3.2015 issued under Section 67 (1) of the KVAT Act. The petitioner has filed an application for registration on 26.2.2015. This was not considered stating that the application cannot be disposed under Section 16(2) of the KVAT Act till the final decision of the proceedings under Section 67(1) of the KVAT Act. The petitioner challenges the above notice.

2. Learned Government Pleader points out that proviso to Section 16(2) of the KVAT Act, which reads as follows:

> "If the prescribed authority after making such enquiries as it may consider necessary, is satisfied that the application is in order and that the particulars furnished therein are correct, it shall register the applicant and issue to him a certificate of registration in the prescribed form.
>
> (provided that registration shall be deemed to

> have been granted with effect from the date of commencement of business irrespective of the date of application, for the purposes of,-
>
> (a) paying tax under sub-section(5) of section 6, subject to eligibility, and:
>
> (b) opting for payment of tax under section 8 for the relevant years subject to eligibility:
>
> Provided further that new dealers applying for registration and existing dealers having registration may avail this benefit subject to the condition that they shall pay tax under the respective provisions along with interest and will not be entitled for any refunds relating to the period prior to filing of application for registration:
>
> "Provided also that in the case of dealers against whom an offence has been detected under Section 67 of the Act before filing application for registration, registration shall be granted under this sub-section subject to the finalization of the proceedings in respect of the offence so detected."

3. According to the learned Government Pleader, since offence is detected after filing the application, the petitioner is not entitled to the benefit of third proviso to Section 16(2) of the KVAT Act. Therefore, the learned Government Pleader opposes the prayer of the petitioner.

4. On the other hand, the learned counsel for the petitioner would submit that even if the offence is detected, no way would affect the right of the petitioner to get registration. It is submitted that whether the application is filed before or after detection of the offence would have no relevance in considering the application in accordance with law.

5. As seen from the rigour of third proviso that the application can be considered notwithstanding the detection of offence, unless proceedings culminates in imposing penalty on the applicant. The mandate of the above proviso would only to show that granting of the registration will be overridden by any penalty being imposed in terms of Section 67(1) of the KVAT Act. Therefore, registration to be granted, will be subject to final outcome of any proceedings under the above proviso.

In that view of the matter, the application submitted by the petitioner has to be considered in accordance with law, notwithstanding the pendency of the offence under Section 67(1) of the KVAT Act, subject to finalisation of the proceedings under the second proviso. Needless to say that the petitioner has to comply with all other requirements under law for granting registration. Needful shall be done within a period of 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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