IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 16778 of 2015 (V)

PETITIONER :

M/S.NEST FOODS & BEVERAGES CORPORATION,
STONE HOUSE, MARKET ROAD, ALUVA, ERNAKULAM 683 101
REPRESENTED BY ITS MANAGING PARTNER-MR.ALTHAAF JEHANGIR

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

RESPONDENTS :
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1. **STATE OF KERALA**
   REPRESENTED BY ITS SECRETARY TO GOVERNMENT
   TAXES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM 695 001

2. **THE COMMERCIAL TAX OFFICER-1V**
   COMMERCIAL TAXES, ALUVA 683 101

3. **THE INTELLIGENCE OFFICER,SAUAD NO. VIII**
   COMMERCIAL TAXES, ERNAKULAM 683 015

BY SENIOR GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 16778 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE ORDERS OF PENALTY DATED 31/3/15 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT U/S.67(1) OF THE KVAT ACT, FOR THE YEARS 2009-10.

EXT.P2: TRUE COPY OF THE ORDERS OF PENALTY DATED 31/3/15 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT U/S.67(1) OF THE KVAT ACT, FOR THE YEARS 2010-11.

EXT.P3: TRUE COPY OF THE ORDERS OF PENALTY DATED 31/3/15 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT U/S.67(1) OF THE KVAT ACT, FOR THE YEARS 2011-12.

EXT.P4: TRUE COPY OF THE ORDERS OF PENALTY DATED 31/3/15 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT U/S.67(1) OF THE KVAT ACT, FOR THE YEARS 2012-13.

EXT.P5: TRUE COPY OF THE ORDERS OF PENALTY DATED 31/3/15 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT U/S.67(1) OF THE KVAT ACT, FOR THE YEARS 2013-14

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

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W.P.(C)No.16778 of 2015

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Dated this the 8th day of June, 2015

JUDGMENT

The petitioner impugns penalty orders before this Court. Exts.P1 to P5 are the penalty orders passed under Section 67(1) of the Kerala Value Added Tax Act, 2003.

2. The ground on which the challenge in the proceedings is that the petitioner have not been given sufficient opportunity in the matter to raise objection and produce books of accounts. It is also contended by the learned counsel for the petitioner that the assessment is not yet over and concluding penalty proceedings before the assessment order, would signify that the petitioner has been denied substantial opportunity to raise objection.

3. The petitioner was initially served with notice on 23.1.2015. This was responded by the petitioner on 12.2.2015 seeking ten days time to produce the accounts. This was adjourned on 23.2.2015 to enable the petitioner to produce books of accounts. The petitioner again failed to produce books of accounts on 23.2.2015 and they were given one more opportunity to produce

books of accounts on 10.3.2015. This was intimated to the petitioner on 5.3.2015. It is to be noted that there was an error in calculating tax and therefore, penalty notice was issued on 19.3.2015 and the same was served on 26.3.2015. The case of the petitioner is that the notice issued by the authority was giving only a short duration to represent and they were unable to produce books of accounts within the time indicated in the notice. It is further submitted that the petitioner was also not given an opportunity to respond to the erratum notice to substantiate thier objection.

4. The learned Government Pleader submits that the erratum notice was only to correct a small difference is in quantification and otherwise, no substantial prejudice has been caused to the petitioner. It is further submitted that sufficient opportunities were given to the petitioner and the petitioner failed to produce books of accounts or to raise objection.

5. Exts.P1 to P5 are the penalty orders. The total penalty imposed is nearly around Rs.4 crores. There cannot be any dispute now to the fact that the petitioner is given opportunity. The only question that remains whether that opportunity is substantial in the

nature for the petitioner to defend the case. There cannot be an hard and fast rules fixing the time for hearing the matter or giving an opportunity to the assessee. Nevertheless, it requires application of mind by the authority considering the volume of subject to give sufficient time to the assessee to respond to the proposal.

Considering the nature of the transaction and the volume involved, I am of the view, the time granted to the petitioner is not sufficient and the petitioner should be given one more opportunity. However, it is to be noted that there are some latches on the part of the petitioner in this matter. The petitioner should have been vigilant enough to appreciate the authority regarding the time required for the purpose of raising objection. Therefore, the petitioner is mulcted with liability to pay costs of Rs.1,00,000/-. The petitioner shall pay Rs.50,000/- to the Government Account No.0040-00-1119109 and pay another Rs.50,000/- to the Kerala Mediation Centre attached to the High Court. The payment shall be effected within three weeks. Thereafter, the petitioner shall appear before the Authority on 6.7.2015 and to produce all the books of accounts within the further time granted by the Authority. The entire exercise shall be completed within two months thereafter. In view of the above, the impugned orders are set aside.

The writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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