IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 17294 of 2015 (J)

PETITIONER:

COSMOPOLITAN HOSPITAL PVT LTD,
POTTAKUZHY JN., MURINJAPALAM, PATTOM,
THIRUVANANTHAPURAM-695004,
REPRESENTED BY ITS MANAGING DIRECTOR,
CHANDRIKA MENON.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENT(S):
----

1. **INTELLIGENCE OFFICER,**
   SQUAD NO.VII, COMMERCIAL TAXES,
   THIRUVANANTHAPURAM AT NEYYATTINKARA, PIN.

2. **THE ASSISTANT COMMISSIONER(ASSESSMENT),**
   COMMERCIAL TAXES, SPECIAL CIRCLE, TAX TOWERS,
   KARAMANA, THIRUVANANTHAPURAM-695002.

BY SENIOR GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 17294 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1 : COPY OF ANNUAL RETURN FILED FOR THE YEAR 2012-2013.

EXT.P1(A) : COPY OF ANNUAL RETURN FILED FOR THE YEAR 2013-2014.

EXT.P2: COPY OF AUDIT REPORT AND STATEMENT IN FORM 13 AND 13A FILED FOR THE YEAR 2012-2013.

EXT.P2(A) : COPY OF AUDIT REPORT AND STATEMENT IN FORM 13 AND 13A FILED FOR THE YEAR 2013-2014.

EXT.P3 : COPY OF PROFIT AND LOSS ACCOUNT FOR THE YEAR 2012-2013.

EXT.P3(A) : COPY OF PROFIT AND LOSS ACCOUNT FOR THE YEAR 2013-2014.

EXT.P4 : COPY OF SIR DATED 25-04-2014 ISSUED BY THE 1ST RESPONDENT.

EXT.P5 : COPY OF NOTICE DATED 30-09-2014 ISSUED BY THE 1ST RESPONDENT.

EXT.P6 : COPY OF NOTICE DATED 17-11-2014 ISSUED BY THE 1ST RESPONDENT.

EXT.P7 : COPY OF REPLY DATED 17-12-2014.

EXT.P8 : COPY OF PENALTY ORDER DATED 18-03-2015 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2012-2013.

EXT.P8(A) : COPY OF PENALTY ORDER DATED 18-03-2015 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2013-14.

EXT.P8(B) : COPY OF PENALTY ORDER DATED 18-03-2015 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2014-15.

EXT.P9 : COPY OF JUDGMENT DATED 16-06-2014 OF THIS HON'BE COURT IN W.P(C)11696/2013.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

C.R.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.17294 of 2015

Dated this the 25th day of June, 2015

J U D G M E N T

The short question in this writ petition revolves around reliance of the accounts by electronic means, by the petitioner-dealer, for the purpose of accounting.

2. The petitioner impugns Exts.P8 to P8(b) orders of penalty under the Kerala Value Added Tax Act, 2003 (for short, the “KVAT Act”). They are maintaining accounts in Tally software.

3. The authority noted in the proceedings that the dealer could not produce correct and complete books of accounts and they even failed to produce purchase bills relating to medicine and surgical goods. Therefore, it was found that the non maintenance of correct and complete books of accounts was with an intention to evade payment of tax and in violation of Section 40 of the KVAT Act.

4. The petitioner produced the accounts in a Compact Disk (CD). They made a request to cross verify the contents in the CD with invoices available in the computer. They also expressed their willingness to take a print out from the CD.

5. It is obvious, the penalty proceedings have been concluded imposing penalty for the reason that the petitioner could not produce complete books of accounts relating to medicine and surgical goods and also with regard to the claim for exemption of surgical goods and consumables. Thus, it was concluded that non

maintenance of accounts was with a purpose to evade tax.

6. The learned counsel for the petitioner, Sri.S.Anil Kumar would argue that the dealer is permitted to use electronic billing and accounting under the proviso to Section 40 of the KVAT Act but, non verification of the accounts produced in electronic means has resulted in imposition of penalty. Thus, it is submitted that the entire procedure is vitiated on account of brushing aside electronic records.

7. Section 40 is amended by the Kerala Finance Act, 2008 and a proviso is included permitting dealers to use electronic billing and accounting, subject to such restrictions as it prescribes. Accordingly, the Kerala Value Added Tax Rules, 2005 (for short the “KVAT Rules”) also have been amended. As per sub rule 15 of Rule 58 of the KVAT Rules, the dealers have to intimate the Assessing Authority in advance, if the accounts or records are maintained by means of computer or any other electronic device. The dealers also have a duty to intimate the Assessing Authority concerned in advance about maintenance of the accounts by electronic means along with password (see Sub Rule 20 of Rule 58 of the KVAT Rules). By SRO 58/2010, Sub Rule 20A of Rule 58 was brought to the Rules, mandating the dealers to maintain electronic billing and accounting systems in the manner indicated therein.

8. Thus, the electronic means of accounting have to be

accepted for the purpose of any proceedings in terms of Section 40 of the KVAT Act. Sub Rules 20 and 20A of Rule 58 of the KVAT Rules clearly lay down the safeguards for relying on electronic means of accounting. However, it is to be noted that the dealers have to intimate the Assessing Authority in advance along with password for any reliance to be placed on electronic means of accounting. In the absence of any such intimation, the Authority need not place any relevance on electronic means for the purpose of Section 40 of the KVAT Act. If the dealers have intimated use of electronic means in advance and they have maintained the accounts as stipulated under Sub Rule 20A(a) of Rule 58 of the KVAT Rules, necessarily, the Authority has to accept it and cannot ignore such accounts in any proceedings initiated for the purpose of verifying the accounts.

9. There is nothing in the impugned orders regarding reasons for rejecting the electronic records. The CD is only a copy of the records maintained by electronic means. It can be compared with the accounts maintained by the electronic means in the computer. The CD is admissible as an evidence under the general provisions of law, based on the amendment to the definition of 'evidence' under Section 3 of the Indian Evidence Act, 1872 read with Section 2(t) of the Information Technology Act, 2000. The Authority has to verify the fact that the petitioner has used the software which reflects their true account of tax liability. The Authority did not state any

reasons for rejecting the electronic means. It appears that the petitioner has been shut out in proving the accounts through electronic means. Thus, the impugned orders are vitiated. Accordingly, the same are set aside.

10. The Authority is directed to verify whether the petitioner has maintained electronic means of accounting in the manner prescribed under the Rules. The Authority shall also verify whether the petitioner had intimated about the use of electronic means in advance before the Assessing Authority. If the petitioner has not maintained the accounts as above, the Authority shall give an opportunity to the petitioner to produce in manual form. The petitioner shall appear before the respondents on 20.07.2015 at 11.00 a.m.

This writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV