IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

W.P.(C).No. 21433 of 2012 (D)

PETITIONER :

M/S. MRG BUILDERS (P) LIMITED,
SOUPARNIKA, KUNNATH MANA LANE,
THRISSUR DISTRICT, REPRESNTED BY ITS
DIRECTOR K NARAYANAKUTTY.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENTS :

1. COMMERCIAL TAX OFFICER (WC & LT),
   DEPARTMENT OF COMMERCIAL TAXES, THRISSUR-680001.

2. FAST TRACK TEAM,
   DEPARTMENT OF COMMERCIAL TAXES, THRISSUR
   REPRESENTED BY COMMERCIAL TAX OFFICER (WC & LT)
   THRISSUR-680001.

3. COMMISSIONER OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM-695001.

4. INSPECTING ASSISTANT COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES, THRISSUR-680001.

R1-R4 BY GOVERNMENT PLEADER : SRI. R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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W.P.(C).No. 21433 of 2012 (D)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.
EXT.P1(a)	COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.
EXT.P1(b)	COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.
EXT.P2	COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.
EXT.P2(a)	COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.
EXT.P2(b)	COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.
EXT.P3	COPY OF OBJECTION FILED BY THE PETITIONER BEFORE THE IST RESPONDENT.
EXT.P3(a)	COPY OF OBJECTION FILED BY THE PETITIONER BEFORE THE IST RESPONDENT.
EXT.P3(b)	COPY OF OBJECTION FILED BY THE PETITIONER BEFORE THE IST RESPONDENT.
EXT.P4	COPY OF ORDER ISSUED BY THE IST RESPONDENT.
EXT.P4(a)	COPY OF ORDER ISSUED BY THE IST RESPONDENT.
EXT.P4(b)	COPY OF ORDER ISSUED BY THE IST RESPONDENT.
EXT.P5	COPY OF JUDGMENT IN W.P(C)No.4884/11 OF THIS HON'BLE COURT.
EXT.P6	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT.
EXT.P6(a)	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT.
EXT.P6(b)	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT.
EXT.P7	COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

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EXT.P7(a) COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P7(b) COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P8 COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.

EXT.P8(a) COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.

EXT.P8(b) COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.

EXT.P9 COPY OF NOTICE ISSUED BY THE 4TH RESPONDENT.

EXT.P10 COPY OF JUDGMENT IN W.P.(C)NO.4708/2011 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A. MUHAMED MUSTAQUE, J

W.P.(C).No. 21433 of 2012

Dated this the 15th day of July, 2015

JUDGMENT

The petitioner approached this Court challenging Ext.P8 series orders, re-opening the assessments completed under Section 17D(2)(d) of the KGST Act. The legality of the order is under challenge on the ground that it cannot be reopened unless fresh materials are received pertaining to tax evasion. It appears that the assessments have been re-opened based on the prior permission granted by the Commissioner of Commercial Taxes.

2. The petitioner's case is that the permission of the Commissioner can only be based on receipt of fresh materials pertaining to tax evasion. Therefore, Commissioner cannot order re-opening of assessments independently, without obtaining fresh receipt of materials.

3. The learned counsel for the petitioner submits that this issue regarding legality of re-opening is covered against the petitioner in the light of a Division Bench judgment of this Court in S.T. REV. 108/11 dated 01.03.2015. However, the learned counsel for the petitioner sought permission to file an

appeal as against merit of the decision.

In view of the fact that this matter is pending before this Court from the year 2012 onwards, the petitioner is permitted to avail statutory remedy against assessment orders. If the petitioner files an appeal within thirty days from today, all revenue recovery proceedings shall be deferred for a period of one month. The period involved before this Court from 14.09.2012 shall be excluded for the purpose of limitation.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE

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