IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).NO. 19660 OF 2015 (F)

PETITIONER(S):

M/S. SANATHAN INFRASTRUCTURE AND DEVELOPERS PRIVATE LIMITED
VYTTILA, KOCHI-19, REPRESENTED BY ITS DIRECTOR
P.J.JACOB.

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

RESPONDENT(S):

ASST. COMMISSIONER (WORKS CONTRACT)
DEPARTMENT OF COMMERCIAL TAXES
OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHI-682018.

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-09-2015, ALONG WITH WPC. 16213/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 19660 OF 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : COPY OF ANNUAL RETURN FILED BY THE PETITIONER FOR THE YEAR 2010-11.

EXT.P1(A) : COPY OF FORM NO.13 ISSUED BY THE AUDITOR OF THE PETITIONER DATED 31.01.2012

EXT.P1(B) : COPY OF FORM NO.13A FILED BY THE PETITIONER DATED 13.01.2012.

EXT.P2 : COPY OF NOTICE ISSUED BY THE RESPONDENT DATED 28.01.2015.

EXT.P2(A) : COPY OF LETTER ISSUED BY THE RESPONDENT DATED 23.09.2014

EXT.P2(B) : COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE COMMISSIONER (TAXES), TRIVANDRUM DATED 03.12.2014

EXT.P3 :COPY OF ADDENDUM TO FORM NO.13A ISSUED BY THE AUDITOR DATED 25.02.2015

EXT.P4 : COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT DATED 24.03.2015

EXT.P5 : COPY OF ORDER ISSUED BY THE RESPONDENT DATED 16.04.2015.

EXT.P6 : COPY OF JUDGMENT IN WPC 1092/2010 OF THIS HON'BLE COURT DATED 13.01.2010

EXT.P7 : COPY OF ORDER ISSUED BY THE RESPONDENT DATED 02.05.2015

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.19660 of 2015

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W.P.(C).No.16213 of 2015

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Dated this the 1st day of September, 2015

J U D G M E N T

Since the issue involved in both these writ petitions is the same they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to the facts and the exhibits is from W.P.(C).No.19660 of 2015.

2. The petitioner is a works contractor and an assessee under the Kerala Value added Tax Act (hereinafter referred to as 'the KVAT Act'). He had filed Ext.P1 return, along with Exts.P1(a) and P1(b) audited statements, for the purposes of assessment under the KVAT Act for the assessment year 2010-2011. It so happened that there were some mistakes that were committed at the time of preparation of the audited statements and this mistake was detected only when steps were taken by the respondents for assessment of the turnover of the petitioner during the said assessment year. The petitioner, therefore, obtained a clarification from the auditors and filed Ext.P4 letter before the respondent seeking permission to revise the figures

representing the turnover in the annual returns, on the basis of the revised audit statement. The request of the petitioner was rejected by the respondent by Ext.P5 order dated 16.04.2015. The reasoning of the respondent while rejecting the request of the petitioner was that there were penalty proceedings that were initiated against the petitioner for suppression of turnover and in those proceedings the petitioner had opted to compound the offence that was alleged against him. It is the stand of the respondent that, in view of the fact that, the petitioner had compounded the penalty proceedings, the petitioner could not be permitted to revise the annual return since there was a specific embargo against such a course of action in the proviso to Section 42 (2) of the KVAT Act. W.P.(C).No.16213 of 2015 is filed by the petitioner challenging Ext.P5 order dated 16.04.2015. While the said writ petition was pending before this Court, the respondent proceeded to pass Ext.P7 order of assessment dated 02.05.2015 where he adopted the higher figure representing turnover, that was initially submitted by the petitioner along with the uncorrected audited statement. In W.P.(C).No.19660 of 2015, Ext.P7 order of the respondent is impugned, inter alia, on the ground that, it is an assessment completed by adopting incorrect figures representing turnover and further, was completed during the pendency of W.P(C).

No.16213 of 2015 where the legality of the order of the respondent, refusing to permit the correction of the returns , was challenged.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondent.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, while it is a fact that there were penalty proceedings initiated against the petitioner during the assessment year in question, in relation to a turnover of Rs.3,53,16,131/- which was found to be suppressed taxable turnover during the assessment year, the revision of the return that was sought for by the petitioner was not for the purposes of revising the return so as to annul the findings of the Intelligence Officer. In fact, the revision of the return, if permitted, would not have altered the basis of the finding of the Intelligence Officer with regard to suppression of taxable turnover to the tune of Rs.3,53,16,131/-. The revision that is sought for by the petitioner in the instant case is basically of the figures showing conceded total contract receipt, which was shown as Rs.82,01,84,340/- whereas in the profit and loss account of the company, it was shown as Rs.49,51,56,488/-. The corrected audited statement would indicate that the lower figure of Rs.49,51,56,488/- ought to have been the figure that was to be conceded as total contract receipt and that the higher figure of Rs.82,01,84,340/- was a mistake. The request of the petitioner was for revising the return already filed by him so as to correct this factual mistake. The revised figures were also duly supported by a corrected audited statement submitted by the auditor. Under the said circumstances, I see no reason why the provision of Section 42 (2) of the KVAT Act, which permits the revision of annual returns for the purposes of rectifying a mistake or omission so long as it was supported by an audit certificate, cannot be invoked in favour of the petitioner in the instant case as well. The proviso to Section 42 (2) which makes it clear that, the sub section will not apply to a dealer against whom any penal action is initiated in respect of <u>such omission or mistake</u> under any of the provisions of this Act, may not be attracted in this case since it is not in dispute that the petitioner is not seeking to revise the return for the purposes of annulling the findings of the Intelligence Officer in the penalty proceedings. I am therefore of the view that, the respondent ought to have permitted the petitioner to correct the figures in the annual returns, on the basis of the corrected audited statements that were filed by the petitioner. Insofar as the filing of revised returns was not permitted, Ext.P7 order of assessment that is now completed against the petitioner has effectively adopted a higher figure as representing the total contract receipts, thereby vitiating the assessment order itself. I, therefore, quash Ext.P7 order in W.P.(C). No.19660 of 2015, as also Ext.P5 order in W.P.(C).No.16213 of 2015, and direct the respondent to permit the petitioner to revise the annual returns in accordance with the revised audited statement, save to the extent of any alteration that may have a bearing on the findings, as regards suppressed taxable turnover detected, in the order dated 17.02.2014 of the Intelligence Officer (IB), Commercial Taxes, Mattancherry. The respondent shall, thereafter, proceed to complete the assessment for the assessment year in question on the basis of the revised annual return and after affording the petitioner an opportunity of being heard. A fresh order of assessment for the assessment year in question shall be passed by the respondent within a period of two months from the date of a receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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