

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 19665 of 2015 (G)

PETITIONER:

**KUNNEL ENGINEERS AND CONTRACTORS (P) LTD.,
2ND FLOOR, MAREENA BUILDING, M.G.ROAD,
ERNAKULAM, KOCHI - 682 016,
REPRESENTED BY ITS DIRECTOR,
SRI.K.J.FRACIS XAVIER.**

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

RESPONDENT:

**COMMERCIAL TAX OFFICER,
(WC & LT), OFFICE OF THE DY. COMMISSIONER,
MATTANCHERRY, PIN - 682 002.**

BY SENIOR GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1- COPY OF ANNUAL RETURN FOR THE YEAR 2006-2007.
- P1(A)- COY OF ANNUAL RETURN FOR THE YEAR 2007-2008.
- P2- COPY OF NOTICE DATED 31.5.2014 ISSUED BY THE RESPONDENT FOR THE YEAR 2006-2007 U/S.25(1).
- P2(A)- COPY OF NOTICE DATED 31.5.2014 ISSUED BY THE RESPONDENT FOR THE YEAR 2007-2008 U/S.25(1).
- P3- COPY OF REPLY DATED 30.7.2014 FILED BY THE PETITIONER FOR THE YEAR 2006-2007.
- P3(A)- COPY OF REPLY DATED 30.7.2014 FILED BY THE PETITIONER FOR THE YEAR 2007-2008.
- P4- COPY OF ASSESSMENT ORDER DATED 14.1.2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2006-2007.
- P4(A)- COPY OF ASSESSMENT ORDER DATED 14.1.2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2007-2008.
- P5- COPY OF STAY ORDER DATED 1.4.2015 OF THIS HONOURABLE COURT IN WP(C) NO.9153 OF 2015.
- P6- COPY OF NOTICE DATED 12.3.2015 ISSUED BY THE RESPONDENT UNDER SECTION 67 OF THE ACT FOR THE YEAR 2006-2007.
- P6(A)- COPY OF NOTICE DATED 12.3.2015 ISSUED BY THE RESPONDENT UNDER SECTION 67 OF THE ACT FOR THE YEAR 2007-2008.
- P7- COPY OF REPLY DATED 10.4.2015 FOR THE YEAR 2006-2007.
- P7(A)- COPY OF REPLY DATED 10.4.2015 FOR THE YEAR 2007-2008.
- P8- COPY OF ORDER DATED 30.4.2015 FOR THE YER 2006-2007.
- P8(A)- COPY OF THE ORDER DATED 30.4.2015 FOR THE YEAR 2007-2008 ISSUED BY THE RESPONDENT.
- P9- COPY OF JUDGMENT DATED 16.6.2014 OF THIS HONOURABLE COURT IN WP(C).NO.11696/13.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.19665 of 2015

Dated this the 1st day of July, 2015

J U D G M E N T

The petitioner impugning Exts.P8 and P8(a) penalty proceedings approached this Court. The main ground of challenge is that, the authority failed to advert to the principles of natural justice, as they have failed to consider the objections raised by the petitioner in the reply.

2. The penalty proceedings Ext.P8 is for the year 2006-07 and Ext.P8(a) is for the year 2007-08. It is to be noted that, in respect of the same period there was an assessment and the same was the subject matter of a writ petition before this Court on the ground of limitation. The matter is still pending. The petitioner questioned the logic in proceeding with the impugned orders, with various objections raised in the reply.

3. The authority on the other hand proceeded in the matter based on the assessment already completed. Though a conclusion has been made that, the assessee had wilfully adopted incorrect computation and misclassification with an intend to evade tax. Nevertheless, how the misclassification occurred or incorrect computation was made were nowhere reflected in the impugned order. The penalty proceedings, being different proceedings from the assessment proceedings, necessarily there must be a ground to impose penalty. No ever, it is seen that, the authority had

assimilated the objections to conclude that the petitioner wilfully adopted incorrect computation and misclassification with an intention to evade tax.

4. In the absence of any such finding, I am of the view that, the impugned orders are liable to be set aside. Accordingly, the impugned orders are set aside. The matter shall be reconsidered by the authority in the light reply given by the petitioner, after notice to the petitioner. The petitioner shall appear before the authority on 21.07.2015 along with a copy of this judgment for fresh proceedings.

This writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

AV