IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 23574 of 2010 (V)

PETITIONER :

JUBILEE MISSION HOSPITAL,
P.B.NO.737, THRISSUR, REPRESENTED BY ITS DIRECTOR
FR.FRANCIS PALLIKKUNNATH.

BY ADVS.SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM

RESPONDENT(S):

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1. THE COMMERCIAL TAX OFFICER (WC & LT),
DEPT. OF COMMERCIAL TAXES, THRISSUR.

2. STATE OF KERALA,
REPRESENTED BY ITS FINANCE SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

*<u>ADDL.R3 IMPLEADED</u>

*ADDL.R3: THE INSPECTING ASSISTANT COMMISSIONER,
DEPT. OF COMMERCIAL TAXES, THRISSUR.

*ADDL.R3 IS IMPLEADED AS PER ORDER IN IA.NO.1229/2011 DATED 01/2/2011

BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.23574/2010

APPENDIX

PETITIONER'S EXHIBITS:

P1	COPY OF THE ORDER NO.WC/R 16/2006-07 DATED 23/6/2010
P1(A)	COPY OF THE ORDER NO.WC/R 16/2007-08 DATED 23/6/2010
P1(B)	COPY OF THE ORDER NO.WC/R 16-2008-09 DATED 23/06/2010
P2	COPY OF THE REPLY DATED 14/1/2010
P3	COPY OF THE REPLY DATED 20/6/2010
P4	COPY OF THE RELEVANT PAGE OF LOCAL DELIVERY NOTE BOOK
P5	COPY OF THE NOTICE DATED 8/7/2010
P6	COPY OF THE DEMAND NOTICE NO.A7-2525(A)/2010-11 DATED 6/1/2011

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 23574 of 2010
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Dated this the 14th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P1 series of assessment orders, that are passed against the petitioner by the 1st respondent. The challenge in the writ petition against Ext.P1 series of assessment orders is essentially that the 1st respondent while passing the said orders, has not considered the issue as regards applicability of Section 6(2)(c) of the Kerala Value Added Tax Act, hereinafter referred to as the “KVAT Act', to the case of the petitioner. It is also the case of the petitioner that by Ext.P5 notice, the assessing authority has, after the date of passing Ext.P1 series orders, required the petitioner to submit his annual reports for the period from 2005-2006 to 2009-2010. The learned counsel for the petitioner would submit that the very fact that the assessing authority called for the accounts of the petitioner for the said years indicates that, he had not gone through the account for the years 2005-2006 to 2008-2009, which is the period covered by Ext.P1 series assessment orders. It is the further contention of the learned counsel for the petitioner that in passing Ext.P1 series of assessment orders, the respondents did not comply with the rules of natural justice, by not affording the petitioner an effective opportunity of representing his case before the assessing authority.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in Ext.P1 series of assessment orders, the 1st respondent enters a specific finding that the contention of the petitioner that they had not issued any goods to the contractor is wrong, as a perusal of the agreement entered into between the petitioner and the contractor clearly indicated that there was to be a supply of materials by the petitioner to the contractor. It is on the basis of the said finding that the 1st respondent proceeded to assess the petitioner to tax during the said assessment years. Further, as regards the contention of counsel for the petitioner regarding violation of rules of natural justice, I find that the petitioner was given an opportunity of being heard on 30.01.2010. Instead of appearing before the 1st respondent on that day, the petitioner requested for 15 days time as per the letter dated 29.01.2010. Thereafter, the 1st respondent afforded them some time to file their objection, but

they did not file their objection to the notice or appear in person to that effect. It was thereafter, that a further notice dated 19.02.2010 was issued to them to file their objection within a week stating that no further adjournment should be allowed. In response to the said letter, the petitioner filed a letter dated 03.03.2010 stating that they had filed a writ petition before this Court, and that the same was come up for consideration on 05.03.2010. It is three months thereafter, that the 1st respondent proceeded to pass Ext.P1 series of assessment orders. I am of the view that the 1st respondent did not occasion a violation of the rules of natural justice, while passing Ext.P1 series of assessment orders against the petitioner. I have also taken note of the fact that, against Ext.P1 series of assessment orders, the petitioner has an effective alternate remedy by way of filing an appeal before the appellate authority under the KVAT Act. Thus, relegating the petitioner to the alternate remedy of filing appeals against Ext.P1 series of assessment order before the appellate authority under the KVAT Act, I dismiss the writ petition, in its challenge against Ext.P1 series of assessment orders.

The learned counsel for the petitioner would submit that on account of the pendency of the writ petition, the petitioner has not preferred any appeal before the appellate authority. Taking note of the said submission of counsel for the petitioner, I make it clear that if the petitioner prefers duly constituted appeals under the KVAT Act, before the appellate authority, within a period of one month from the date of receipt of a copy of this judgment, then the appellate authority shall consider the appeal on merits, after hearing the petitioner. To enable the petitioner to pursue its alternate remedy as above, I direct that the interim order against recovery granted by this Court, shall continue to be in force, for a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /14.10.15