IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 19843 of 2015 (E)

PETITIONER :

M/S. VAYALAR FIBRE MILLS
PATTANAKKAD P O, CHERTHALA 688531
REPRESENTED BY ITS PRESIDENT
K. R. RAJENDRA PARASAD, AGED 60 YEARS

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS

RESPONDENTS :
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1. THE INTELLIGENCE OFFICER(INVESTIGATION BRANCH)
COMMERCIAL TAXES, CIVIL STATION ANNEX,
ALAPPUZHA 688011

2. THE COMMERCIAL TAX OFFICER,
MINI CIVIL STATION, CHERTHALA 688524

3. THE DEPUTY COMMISSIONER (INTELLIGENCE)
TAX TOWER, KARAMANA P. O., THIRUVANANTHAPURAM-695002

R1 TO R3 BY SENIOR GOVERNMENT PLEADER
SMT. SHOBA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 19843 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:- **TRUE COPY OF THE ANNUAL RETURN E-FILED ON 20/7/2010 IN KAVATIS FOR THE YEAR 2009-10**

P2:- **TRUE COPY OF THE ANNUAL RETURN E-FILED ON 3/6/2011 IN KAVATIS FOR THE YEAR 2010-11**

P3:- **TRUE COPY OF THE ANNUAL RETURN E-FILED ON 15/5/2012 IN KVATIS FOR THE YEAR 2011-12.**

P4:- **TRUE COPY OF THE FINAL REPORT/CHARGE SHEET DTD 5/11/2013 SUBMITTED BEFORE THE HON'BLE CBI COURT, ERNAKULAM.**

P5:- **TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2009-10 DTD 3/6/2015 ISSUED BY IST RESPONDENT TO THE PETITIONER.**

P6:- **TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2010-11 DTD 3/6/2015 ISSUED BY IST RESPONDENT TO THE PETITIONER.**

P7:- **TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2011-12 DTD 3/6/2015 ISSUED BY IST RESPONDENT TO THE PETITIONER.**

P8:- **TRUE COPY OF SUCH QUOTATION GIVEN ON 25/4/2009 TO MR VISWANANTHAN O. K, ONE OF THE BENEFICIARIES.**

P9:- **TRUE COPY OF ANOTHER SUCH QUOTATION FOR AN AMOUNT OF RS 3,60,000/- GIVEN ON 25/4/2009 TO ONE OF SUCH BENEFICIARY MR DAYANANDAN P T**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.19843 of 2015

Dated this the 2nd day of July, 2015

J U D G M E N T

The petitioner impugns penalty proceedings for the year 2009-10, 2010-11 and 2011-12, in this writ petition.

2. The main challenge of the petitioner is that, in spite of the detailed reply given by them, the authority did not advert to the reply and repelled to the same by stating that, it is not convincing. Therefore, there was denial of substantial natural justice in assimilating the objections of the petitioner against the proposal.

3. The penalty proceedings under Section 67 of the KVAT Act is essentially exercised as to the conduct of assessee or dealer in suppression or evasion of tax. The proposal has been controverted by detailed reply. The petitioner also relies on the CBI report against certain allegations. According to the petitioner, the CBI report is also having a ramification in the matter.

4. As matter stands now, the order passed by the authority repelling petitioner's objections on the ground of not convincing, according to me is an unsustainable law. The hearing opportunity is not an empty formality, but substantial compliance of natural justice demands consideration of the reply, to enter into the satisfaction of imposing penalty under Section 67 of the KVAT Act. In that view of the matter, I am of the view that, the impugned orders are

unsustainable and it cannot stand to test of a legal order under Section 67 of the KVAT Act.

5. Accordingly, the impugned orders are set aside. The petitioner shall appear before the authority on 22.07.2015 at 11 a.m. Thereafter, after adverting to the petitioner's objections and hearing the petitioner, fresh orders shall be passed within a further period of one month.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV