IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 21249 of 2015 (E)

PETITIONER:

SABU JOSEPH T.A.,
PROPRIETOR, FAB TECH ENGINEERING WORKS,
AROOR-688 534, ALAPPUZHA DISTRICT.

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

RESPONDENTS:
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1. THE AIT & COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, KUTHIYATHODE-688 533.

2. THE DEPUTY TAHSILDAR (RR),
   TALUK OFFICE, KOCHI-682 001.

BY SR. GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

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APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1- TRUE COPY OF THE STATUS OF REGISTRATION OF THE DEALER AVAILABLE IN KVATIS ON 07-07-2015.

EXHIBIT P2- TRUE COPIES OF THE PROVISIONAL ASSESSMENT ORDERS FOR THE RETURN PERIODS 12/2012 TO 03/2013 ALL ARE DATED 20-02-2014 FOR THE YEAR 2012-13.

EXHIBIT P3- TRUE COPIES OF THE ASSESSMENT ORDER DATED 20-02-2014 FOR THE YEAR 2013-14 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P4- -TRUE COPIES OF THE PROVISIONAL ASSESSMENTS FOR THE RETURN PERIODS JANUARY TO MARCH 2014.

EXHIBIT P5- TRUE COPIES OF THE MONTHLY ASSESSMENTS FOR THE RETURN PERIODS MAY TO AUGUST 2014 ON 31-10-2014.

EXHIBIT P6- TRUE COPY OF THE MONTHLY ASSESSMENT ORDER DATED 21-11-2014 FOR THE RETURN PERIOD SEPTEMBER 2014.

EXHIBIT P7- TRUE COPY OF THE MONTHLY ASSESSMENT ORDER DATED 11-12-2014 FOR THE RETURN PERIOD OCTOBER 2014.

EXHIBIT P8- TRUE COPY OF THE MONTHLY ASSESSMENT ORDER DATED 31-01-2015 FOR THE RETURN PERIOD NOVEMBER 2014.

EXHIBIT P9- TRUE COPY OF THE MONTHLY ASSESSMENT ORDER DATED 26-03-2015 FOR THE RETURN PERIOD DECEMBER 2014.

EXHIBIT P10- TRUE COPY OF THE MONTHLY ASSESSMENT ORDER DATED 06-04-2015 FOR THE RETURN PERIOD JANUARY 2015.

EXHIBIT P11- TRUE COPY OF THE LETTER DATED 31-01-2015 REQUESTING TO CANCEL CERTIFICATE OF REGISTRATION SUBMITTED BEFORE THE 1ST RESPONDENT.

EXHIBIT P12- TRUE COPIES OF RR NOTICES U/S. 7 & 34 ALL ARE DATED 25-03-2015 FOR THE RETURN PERIODS 12/12 TO 03/13 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P13- TRUE COPIES OF THE RR NOTICES U/S. 7 & 34 ALL ARE DATED 25-03-2015 FOR THE RETURN PERIODS 04/13 TO 09/13 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

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EXHIBIT P14- TRUE COPIES OF THE RR NOTICES U/S. 7 & 34 ALL ARE DATED 27-03-2015 FOR THE RETURN PERIODS 10/13 TO 03/14 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P15- TRUE COPIES OF THE RR NOTICES U/S. 7 & 34 ALL ARE DATED 27-03-2015 FOR THE RETURN PERIODS 04/14 TO 10/14 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P16- TRUE COPY OF THE RR NOTICE U/S. 7 & 34 ALL ARE DATED 23-04-2015 FOR THE RETURN PERIOD NOVEMBER 2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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Dated this the 29th day of July, 2015

JUDGMENT

The petitioner, challenging series of orders under Section 22(3) of the Kerala Value Added Tax Act, has approached this Court.

2. It is admitted that the petitioner received the notice under Section 22(3) of the KVAT Act. The petitioner did not respond to the notice. Thereafter, an order has been passed based on the best judgment basis under Section 22(3) of the KVAT Act.

3. The petitioner's case is that he is prepared to file return and remit tax and therefore, the order may be revoked. It is also submitted that he has cancelled the registration and closed down the business on account of the loss suffered by him in the business. It is the case of the petitioner that he is employed now elsewhere and he is prepared to co-operate with any assessment proceedings.

4. Per contra, learned Government Pleader opposed the prayer of the petitioner and submitted that more than Rs.40 lakhs is due from the petitioner. It is further submitted that once the assessment is completed under Section 22(3) of the KVAT Act, the

petitioner cannot seek permission to file a return. The petitioner had an option to file return when he received notice and he has not chosen to do so.

5. The fact now remains that the petitioner did not take part in the proceedings and there are latches on the part of the petitioner. However, taking note of the facts and circumstances, the petitioner cancelled the registration and closed down the business, this Court is of the view that an opportunity should be given to the petitioner.

Taking note of the liability which is imposed on the petitioner, the petitioner is given an opportunity. However, the petitioner's latches cannot be left with impunity. Therefore, the petitioner is liable to pay cost of Rs.25,000/-. Accordingly, the impugned orders are set aside on condition that the petitioner shall remit costs of Rs.25,000/- within two weeks in the Government Account No.0040-00-1119109. The petitioner shall appear before the Authority on 17.8.2015 at 11 a.m. and if the petitioner seeks permission to file return, that shall be accorded to the petitioner by activating the KVAT Act for the purpose of filing return.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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