IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 25135 of 2012 (N)

PETITIONER(S):

SMT.FAREEDA HAJI VAHEED
PROPRITRIX, SOUTH ASIAN TRADE LINKS, G-211
PANAMPILLI NAGAR, COCHIN-30.

BY ADVS.SRI.RAJU JOSEPH (SR.)
SRI.C.N.MIDHUN

RESPONDENT(S):
----

1. **THE DEPUTY COMMISSIONER APPEALS**
   COMMERCIAL TAXES, PERUMANOOR.P.O, PIN-682 015.

2. **THE COMMERCIAL TAX OFFICER**
   IIND CIRCLE, TRIPPUNITHURA, ERNAKULAM-682 052.

3. **THE TAHSILDAR (R.R)**
   KANAYANNOOR TALUK, ERNAKULAM-682 011.

4. **THE TAHSILDAR**
   MUVATTUPUZHA TALUK, MUVATTUPUZHA.P.O, PIN-686 661.

5. **DISTRICT COLLECTOR**
   ERNAKULAM, PIN-682 030.

R BY GOVERNMENT PLEADER SRI.BABY JOHN PULIKKAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.25135/2012

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF SALE BILL ISSUED BY STAR TRADING PANAMPILLI NAGAR, COCHIN DATED 25.3.1999.

EXT.P2: COPY OF THE SALE BILL ISSUED BY STAR TRADING PANAMPILLI NAGAR, COCHIN DATED 26.3.1999.

EXT.P3: COPY OF BILL ISSUED BY STAR TRADING PANAMPILLI NAGAR, COCHIN DATED 31.3.1999.

EXT.P4: COPY OF ASSESSMENT ORDER PASSED BY THE 2ND RESPONDENT AGAINST SOUTH ASIAN TRADE LINKS COCHIN IN RESPECT OF THE ASSESSMENT YEAR 1998-99 DATED 31.12.2002.

EXT.P5: COPY OF PENALTY ORDER PASSED AGAINST SOUTH ASIAN TRADE LINKS DATED 31.12.2002.

EXT.P6: COPY OF ORDER PASSED BY THE DEPUTY COMMISSIONER APPEAL, KOTTAYAM IN THE REVISION FILED BY THE PETITIONER DATED 17.2.2009.

EXT.P7: COPY OF PENALTY ORDER PASSED AGAINST STAR TRADING M.C.ROAD KOTTAYAM UNDER SECTION 45 A OF THE KGST ACT DATED 31.5.2002.

EXT.P8: COPY OF ASSESSMENT ORDER PASSED AGAINST STAR TRADING M.L.ROAD, KOTTAYAM IN RESPECT OF THE YEARS 1998-99.

EXT.P9: COPY OF RECTIFICATION PETITION TOGETHER WITH THE STAY PETITION.

EXT.P10: COPY OF JUDGMENT IN W.P.(C).NO.13081/2012 DATED 21.6.2012.

EXT.P11: COPY OF ORDER PASSED BY 1ST RESPONDENT NO.A2-2981/2012 DATED 28.9.2012.

EXT.P12: COPY OF ATTACHMENT NOTICE ISSUED UNDER SECTION 36 OF THE R.R.ACT IN RESPECT OF PROPERTY IN ERNAKULAM VILLAGE DATED 16.3.2012.

EXT.P13: COPY OF NOTICE ISSUED UNDER SECTION 36 OF THE R.R. ACT IN RESPECT OF THE PROPERTIES IN MULLAVOOR AND VALAKAM VILLAGE DATED 24.4.2012.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.25135 OF 2012 (N)

Dated this the 19th day of February, 2015

J U D G M E N T

The petitioner is a dealer under the Kerala General Sales Tax Act, hereinafter referred to as the 'KGST Act'. In the writ petition, the petitioner challenges Ext.P11 order that is passed by the 1st respondent, on a rectification application filed by the petitioner seeking to rectify mistakes that had crept into Ext.P6 appellate order of the 1st respondent. The brief facts leading to the passing of Ext.P11 order are as follows:

For the assessment year 1998-99, the petitioner had filed returns showing nil taxable turnover. These returns were accepted and the assessment completed accordingly. Pursuant to an inspection of the business premises of the petitioner on 2.2.2001, penalty proceedings under Section 45A of the KGST Act were initiated against her. In those proceedings, the turnover pertaining to purchases from M/s.A-One Traders and M/s.Star Trading, Cochin, were treated as suppressed purchase turnover and assessment proceedings under Section 19 of the KGST Act were completed against the petitioner by adding the said alleged suppressed turnover to the turnover already declared by the petitioner. Ext.P4 is the assessment order that was passed under Section 19 for the assessment year 1998-99. On the basis of Ext.P4 assessment order, Ext.P5 penalty order was also passed for the same assessment year. The petitioner challenged the assessment order as well as the penalty order before the 1st respondent. The 1st respondent, while dealing with the appeal against the assessment, cancelled the equal addition that was made to the suppressed turnover. As far as the penalty order was concerned, the 1st respondent reduced the penalty that was imposed on the petitioner by 50%. The appellate order of the 1st respondent is produced as Ext.P6 in the writ petition. It would appear that the Appellate tribunal, while dealing with an appeal preferred by the petitioner against the order of the 1st respondent in the assessment proceedings, confirmed the order of the 1st respondent. Thereafter, in a further revision preferred by the petitioner (S.T.Rev.No.11/2007) before this Court, this Court dismissed the said revision. Although the petitioner preferred a review petition, against the said judgment dismissing the revision petition, the review petition also came to be dismissed by judgment dated 8.11.2013. It will be apparent from a reading of the judgment of this Court in S.T.Rev.No.11/2007, as also in R.P.No.258/2012 in S.T.Rev.No.11/2007, that the contention of the petitioner that she was not the first seller of the goods involving a turnover of Rs. 2,29,23,000, and that it was M/s.Star Trading, Kottayam, who was the first seller of the goods in question was not accepted by the court in the said proceedings.

2. As regards the penalty proceedings that culminated in Ext.P6 order of the 1st respondent, it would appear that the petitioner, who had subsequently obtained the assessment orders passed in respect of M/s.Star Trading, Kottayam, for 1998-99, found that the said Firm had also been assessed on the same turnover of Rs.2,29,23,000/- during 1998-99, that had been assessed as sales turnover in the petitioner's assessment. The petitioner, therefore, raised a contention with regard to exemption of the turnover in his assessment, as second sales, while challenging the penalty orders passed against him. The said contention did not, however, find favour with the revision authority. Although the petitioner then filed a rectification application against the order in revision, the said petition filed before the 1st respondent came to be dismissed by Ext.P11 order, which is impugned in the present writ petition.

3. It is relevant to note that, although the petitioner had relied on Exts.P7 and P8 orders that were passed in respect of M/s Star Trading, Kottayam, while pursuing the review petition in

S.T.Rev.No.11/2007, based on the averments in the counter affidavit filed by the State Government in the said review petition, that Exts.P7 and P8 orders were subsequently set aside and remanded to the Assessing authority for fresh consideration, this Court, while disposing the review petition found that the petitioner could not place reliance on Exts.P7 and P8 orders to contend that it was not the first seller of the goods that had been purchased from M/s.Star Trading, Kottayam.

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

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P11 order, the 1st respondent considers the fact that the penalty order of the Intelligence Officer had subsequently merged with Ext.P6 appellate order of the 1st respondent. It is also not in dispute that at the time when Ext.P11 order was passed, there was no order passed in respect of M/s.Star Trading, Kottayam, which recognised the turnover of Rs.2,29,23,000/- as representing the sales turnover of wheat sold by the said M/s.Star Trading, Kottayam, to the petitioner,

to support the claim of the petitioner that the sales turnover in its hands represented turnover pertaining to second sales of wheat. In that view of the matter, I do not see any illegality in Ext.P11 order passed by the 1st respondent. If the petitioner is aggrieved by Ext.P6 order of the 1st respondent, as endorsed by Ext.P11 order in the rectification petition, it is open to the petitioner to pursue appropriate proceedings against the said orders before the appellate/revision authority under the KGST Act. The writ petition, in its challenge against Ext.P11 order fails, and is accordingly dismissed.

I make it clear that, while dismissing the writ petition in its challenge against Ext.P11 order, I have not expressed any opinion on the merits of the petitioner's contentions as regards the turnover of Rs.2,29,23,000/- not representing its taxable turnover under the KGST Act.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp