IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).NO. 22743 OF 2015 (P)

PETITIONER(S):

SHRI M.M.THAMPAN
CONTRACTOR, SAHIDA NIVAS, MAYYIL P.O.
KANNUR - 670 602.

BY ADVS.SRI.T.M.SREEDHARAN (SR.)
SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENT(S):

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1. THE COMMERCIAL TAX OFFICER (WORKS CONTRACT)
KANNUR-670 001.

2. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

R1,R2 BY ADV. GOVERNMENT PLEADER SRI.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 22743 OF 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE NOTICE NO. 32527661212/09-10 DATED 05/01/2010 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P2-TRUE COPY OF THE REPLY DATED 28/02/2015 SUBMITTED BY THE PETITIONER TO THE IST RESPONDENT.

EXHIBIT-P3-TRUE COPY OF THE ORDER DATED 10/03/2015 ALONG WITH DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.22743 of 2015

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Dated this the 11th day of November, 2015

<u>J U D G M E N T</u>

The challenge in the writ petition is against Ext.P3 order of assessment passed under Section 25(1) of the Kerala Value Added Tax Act (hereinafter referred to as the Act for short) in relation to the petitioner for the assessment year 2009-2010. On a perusal of Ext.P3 order, it is seen that the said order has been passed against the petitioner solely on the ground that the petitioner had not filed an audited statement as per Section 42 of the Act read with Rule 60. A Division Bench of this Court in the judgment dated 25.09.2014 in O.T.Rev.No.49 of 2014 has found that the grounds on which the assessment can be made under Section 25(1) of the KVAT Act are enumerated in the section itself, and that the terms of the said Section does not enable the revenue to complete a best judgment assessment on the ground that the assessee has not filed an audited statement in Form No.13 and 13A. Taking cue from the said judgment of the Division Bench of this Court, I find that Ext.P3 order in the present writ petition also cannot be legally sustained. Accordingly, Ext.P3 order is quashed and the writ petition is allowed with consequential reliefs to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/11.11.15