IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 22750 of 2015 (P)

PETITIONER :

MOHAMMEDKUTTY C.,
AGED 39 YEARS, S/O. ALAVI HAJI, CHOLAYIL HOUSE,
KURUKA P.O., KALPAKANCHERRY, VIA. MALAPPURAM,
PIN-676 551.

BY ADV. SRI.R.RAMADAS

RESPONDENTS :

1. THE INTELLIGENCE OFFICER (IB) - II,
OFFICE OF THE DEPUTY COMMISSIONER (INT)
COMMERICAL TAXES, KOZHIKODE, PIN-673 001.

2. THE DEPUTY TAHSILDAR (RR),
TALUK OFFICE, TIRUR, MALAPPURAM
PIN-676 101.

3. COMMERCIAL TAX OFFICER,
OFFICE OF THE COMMERCIAL TAX OFFICER,
MANJERI, PIN-676 121.

R1 TO R3 BY SR. GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

WP(C).No. 22750 of 2015 (P)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1 **A TRUE COPY OF THE PENALTY ORDER DATED 31.10.2012 ISSUED BY THE 1ST RESPONDENT.**

EXT. P2 **TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 3ND RESPONDENT DATED 23.6.2015.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

****

W.P.(C) No.22750 of 2015

****

Dated this the 3rd day of August, 2015

JUDGMENT

The petitioner, aggrieved by Ext.P1 penalty order under Section 67(1) of the Kerala Value Added Tax Act, has approached this Court. The penalty order is of the year 2008-2009. The notice was issued to the petitioner on 11.10.2012. Thereafter, the proceedings were concluded on 31.10.2012. The petitioner did not avail an opportunity to raise objection in the proceedings. The petitioner has approached this Court when revenue recovery proceedings are initiated against him.

2. The petitioner's case is that the penalty order is invalid in law in as much as it was based on estimation. It is further submitted that though he is a lessee in respect of the premises under the Airport Authority and the business therein has been carried on by one Kunhalankutty K. and therefore, he is not liable to pay tax under the Kerala Value Added Tax Act. The petitioner does not dispute the receipt of notice.

3. The learned Government Pleader made available before this Court the reply letter issued by the petitioner. In that communication, he has sought time to produce the document.

4. However, the learned counsel for the petitioner submits that this reply perhaps given by Kunhalankutty K. and not by him.

5. It appears that all the notices have been communicated to the address of the premises. According to the petitioner, he was not present in the premises and any communication issued to the business premises cannot be construed as a communication to the petitioner. It is further submitted that he is prepared to remit portion of the amount demanded without prejudice to his contentions and he may be given an opportunity in the proceedings.

6. The learned Government Pleader opposed the prayer of the petitioner.

However, taking note of the fact that the petitioner is prepared to pay a portion of the amount and appear before the Authority, this Court is of the view that an opportunity should be

given to the petitioner, especially, in the facts and circumstances, where the Authority relied upon best judgment to impose penalty upon the petitioner in the absence of any relevant records. Accordingly, the impugned order is set aside on following conditions:

i. The petitioner shall remit a portion of the amount demanded, Rs.1 lakh on or before 24.8.2015.

ii. If the petitioner deposits the above amount, the petitioner shall be given an opportunity.

iii. The petitioner shall appear before the first respondent on 1.9.2015 at 11 a.m.

iv. Thereafter, the first respondent, after adverting to the petitioner's objection and records, take appropriate decision within a further period of two months.

v. The payment effected would depend upon the outcome of the proceedings.

vi. In view of the above, the revenue recovery proceedings are set aside.

vii. However, it is made clear that if the petitioner fails to remit the above amount, the petitioner will not be entitled for the benefit of this judgment.

This writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ln