IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C).No. 23440 of 2015 (D)

PETITIONER:

M/S.CHOICE CONSTRUCTIONS,
IV/432 A, P.V.SREEDHARAN ROAD,
KUMBALAM, KOCHI, REPRESENTED BY
ITS AUTHORISED SIGNATORY K.SRIKESH PAI.

BY ADV. SRI.JOSE JACOB

RESPONDENT(S):

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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY,
   COMMERCIAL TAXES, GOVERNMENT OF KERALA,
   THIRUVANANTHAPURAM, KERALA.

2. ASSISTANT COMMISSIONER (WC & LT),
   OFFICE OF THE DEPUTY COMMISSIONER,
   COMMERCIAL TAXES DEPARTMENT, 2ND FLOOR,
   CLASS TOWER, OLD RAILWAY STATION, KOCHI-18.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 23440 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS :

P1 : **TRUE COPY OF NOTICE UNDER SECTION 25(1) RELATING TO FY 2010-11 DTD.10.11.2014.**

P2 : **TRUE COPY OF THE REPLY TO NOTICE SECTION 25(1) RELATING TO FY 2010-11 DTD.6.2.2015.**

P3 : **TRUE COPY OF THE ORDER AND DEMAND NOTICE RELATING TO FY 2010-11 DTD.20.2.2015.**

P4 : **TRUE COPY OF THE JUDGMENT PASSED BY THIS HON'BLE HIGH COURT OF KERALA, DTD.9.4.2015.**

P5 : **TRUE COPY OF THE SUMMARY OF ARGUMENTS DTD.23.4.2015.**

P6 : **TRUE COPY OF THE ORDER RELATING TO FY 2010-11 DTD.17.6.2015.**

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 23440 of 2015

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Dated this the 30th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 order of the 2nd respondent passed under the Kerala Value Added Tax Act, hereinafter referred to as the "KVAT Act", for the assessment year 2010-2011. In the writ petition, while the petitioner challenges the findings of the 2nd respondent in Ext.P6 order on merits, the petitioner also mounts an incidental challenge against the validity of Section 8 of the KVAT Act, which deals with payment of tax at compounded rates. It is the contention of the petitioner that the said Section, as it stood prior to the amendment with effect from 01.04.2014, contemplates that any works contractor not falling under clause (i) above may, at his option, instead of paying tax in accordance with the provisions of the said section, pay tax at three per cent of the contract amount, after deducting the purchase value of goods, excluding freight and gross profit element, consigned into the State on stock transfer or purchased from outside the State, and for the purchase value of goods so deducted shall pay tax at the scheduled rate applicable to such goods. Counsel for the petitioner would submit that, inasmuch as the said section contemplates a tax on goods purchased from outside the State, the same would fall foul of Article 286 of the Constitution of

India, which prohibits the imposition of any tax on sale or purchase of goods in the course of import into the Country. The contention of the petitioner is that, the assessing authority has interpreted Section 8 as contemplating a tax even on goods that are purchased in the course of import and to that extent, Section 8 would fall foul of the provisions of Article 286 of the Constitution of India. It is on the said contention that the petitioner challenges the validity of Section 8 (a) (ii) of the KVAT Act.

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

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the challenge against the provisions of Section 8 (a) (ii) of the KVAT Act, prior to its amendment with effect from 01.04.2014, is essentially on the apprehension that the said statutory provision contemplates the levy of tax on goods that are purchased in the course of import from outside the Country. A plain reading of Section 8 would show that the tax contemplated therein is only on

the goods purchased from outside the State. The provision itself does not expressly state that the goods purchased from outside the State would also include goods that are purchased in the course of import. Thus, on a plain reading of the provisions of the statute, I do not see it offending the provisions of Article 286 of the Constitution of India. The challenge of the petitioner, against the particular interpretation of Section 8 of the KVAT Act by the assessing authority, is one that can be pursued in appellate proceedings against the order of the assessing authority. Under the said circumstances, I relegate the petitioner to the alternate remedy against Ext.P6 order, of pursuing an appeal against the said order before the appellate authority under the KVAT Act. The writ petition in its challenge against Ext.P6 order is, therefore, dismissed.

The learned counsel for the petitioner would submit that on account of the pendency of the writ petition, he has not preferred an appeal against Ext.P6 order before the appellate authority. Taking note of the said submission, I make it clear that, if the petitioner prefers a duly constituted appeal under the KVAT Act, against Ext.P6 order, after complying with all the statutory formalities, within a period of one month from the date of receipt of a copy of this judgment, the appellate authority shall treat the same as a duly constituted appeal under the KVAT Act, and proceed to dispose the stay petition/appeal expeditiously. To enable the petitioner to pursue the appellate remedy within the time granted above, I direct that recovery steps for recovery of amounts confirmed against the petitioner by Ext.P6 order shall be kept in abeyance for the aforementioned period of one month.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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