IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No. 26381 of 2013 (W)

PETITIONER:

AYYAPPAN V.T. AGED 67 YEARS
S/O.CHATHUKUTTY, VAZHAYIL THARAYIL HOUSE
PURATHOOR THIROOR, MALAPPURAM DISTRICT, PIN-676 102.

BY ADV. SRI.K.N.CHANDRABABU

RESPONDENTS:

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1. THE COMMERCIAL TAX OFFICER-1
OFFICE OF THE COMMERCIAL TAX OFFICER, TIRUR
MALAPPURAM DISTRICT, PIN-

2. THE PURATHOOR KSHEERA ULPADAKA SAHAKARANA
SANGHAM LTD. NO.-22 D
REPRESENTED BY ITS SECRETARY, PURATHOOR VILLAGE
THIRUR TALUK, MALAPPURAM DISTRICT, PURATHOOR P.O
MALAPPURAM DISTRICT PIN-676102

3. THE DEPUTY THAHSILDAR
REVENUE RECOVERY, TIRUR, MALAPPURAM DISTRICT
PIN

4. THE VILLAGE OFFICER, PURATHUR
MALAPPURAM DISTRICT, PIN-

5. M.P. KUMARAN, S/O.KUNHOTHA
MODAN PARAMBIL HOUSE, P.O.PURATHUR
MALAPPURAM DISTRICT, PIN-

R1 BY SRI.SUSHEEL KUMAR, SR.GOVERNMENT PLEADER
R5 BY ADV. SRI.SAJU.S.A

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C).No. 26381 of 2013 (W)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 - THE TRUE COPY OF THE GO(MS)NO.17/2010/F&PD DATED 18-3-2010 AND THE NORMS APPENDED TO THE ABOVE GO

EXT.P2 - A TRUE COPY OF THE ASSESSMENT ORDER NO.A6/2012 DATED 16-10-2012 PASSED UNDER SECTION 25(1) OF THE KVAT ACT, BY THE FIRST RESPONDENT.

EXT.P3 - TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT BY THE 3RD RESPONDENT TAHSILDAR.

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.,

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W.P.(C) No.26381 of 2013

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Dated this the 10th day of June, 2015

JUDGMENT

This writ petition is filed challenging Ext.P2 proceedings and Ext.P3 assessment order initiated against the petitioner and others for recovery of a sum of ₹ 6,45,366/- on the basis of Ext.P3 assessment order. Ext.P2 is the proceedings issued by the Commercial Tax Officer under Section 25(1) of the Kerala Value Added Tax Act, 2003 (hereinafter referred to as 'KVAT Act' for short) finalising the assessment against Purathoor Ksheera Ulpadaka Sahakarana Samgham, the 2nd respondent herein, according to which a sum of ₹3,35,094/-was found due from it towards tax along with interest and a sum of ₹ 3,10,272/- towards penalty. In Ext.P2 proceedings, it was stated that 2nd respondent society had obtained permit from the Port Office to dredge and sell 4,000 tons of sand in the month of January 2012 and 2,500 tons of sand in the month of February 2012. The society had reported sales of 4,315 tons of sand in January 2012. But it did not remit any tax in the Commercial Tax Office. Therefore, the Commercial Tax Officer issued Form 17 notice to the Secretary of the society on 24.4.2012 directing production of books of accounts. Since the society did not respond to the same, notices under Section 25(1) and 67(1) of the KVAT Act were issued and served on 30.6.2012. As there was no response to any of these notices and the tax was not remitted, the assessment was completed. A sum of ₹3,10,272/- , along with interest at the rate of 12% from 2/2012 to 10/12 was found to be the tax due with an equal amount towards penalty.

2. Thereafter Ext.P3 demand notice was issued under section 73 of the Revenue Recovery Act for realisation of the sum of ₹6,45,366/- to petitioner, Purathoor Ksheera Ulpadaka Sahakarana Sangham and one Mr.M.P.Kumaran, who are respondents 2 and 5 respectively in this writ

petition.

3. According to the petitioner, he was only the Chairman of the administrative committee and he is in no way responsible for payment of any tax. According to him, the society was not functioning and therefore the Government nominated him as Chairman along with 2 others as directors for the administration of the society. The petitioner has stated that the society was engaged in dredging sand from the specified zone of the Ponnani Port Limits and from 2010 onwards the cash credited in the account of the society in respect of the sale of sand dredged from the Ponnani Port was handled by the 5th respondent and therefore the 5th respondent is responsible for liquidating the liability.

4. The petitioner argues that he is not an assessee or dealer so as to proceed against him for realisation of tax due and he cannot be made responsible to remit the amount demanded in Ext.P3 notice. It is stated that in the year 2012

an Administrator was appointed to conduct an election and to constitute a governing body. According to him, the Administrator was in charge of the society at the relevant time and he is not having any access to the books of the society.

5. The first respondent has filed a counter affidavit, stating that though the society dredged sand from Ponnani Port limits during the period from August 2011 to February 2012, it did not remit the tax for the sale of sand in January and February 2012. It is stated that since the society did not appear or produce the books of account for verification, despite notices assessment was completed and the assessment order was served on the society on 20.10.2012. Revenue recovery proceedings as per Ext.P3 were initiated against the petitioner and others, who were in charge of the society and drudging and sale of sand at the relevant time. In paragraph 5 of the counter affidavit, it is stated as follows:

> *It is submitted that, on 4.11.2013, the elected Director Board Members submitted remarks regarding the liability ordered from the office of Commercial Tax Officer, Tirur in which they have explained the following facts. The elected Director Board took charge on 3.7.2012 from previous administrative committee consisting of M.P.Kumaran, U.Abdurahman and V.T.Ayyappan. They reported that the Purathur Ksheerolpadaka Sahakarana Sangham has no assets. Books of accounts regarding the drudging of sand and its income and expenditure is not available in the society office. This reveals that the administrative committee headed by V.T.Ayyappan was willfully and deliberately manipulating the transactions and thereby evaded the tax."*

6. As per the counter affidavit, the administrative committee which was in charge of the society at the relevant time, has collected tax and is responsible to remit the tax it collected to Government and therefore revenue recovery proceedings were initiated against the petitioner, the 5th respondent, one Mr.U.Abdurahman and the Secretary of the society.

7. Heard the learned counsel for the petitioner as well

as the learned Government Pleader.

8. The learned Government Pleader submitted that the proceedings initiated against the petitioner was in terms of Section 29 (3) of the KVAT Act, which provides that all the persons who were partners of a firm at the time of its discontinuance or dissolution of the partnership of a firm, shall be jointly and severally liable, for the amount of tax, penalty or other amount payable. It is an admitted fact that the society was not a registered dealer. But under explanation I below Section 2(xv)(e) of the KVAT Act, a society, whether it is co-operative society or an association of persons, is a dealer when engaged in the sale of sand and is liable to pay tax. It is stated that in view of the fact that the society was not functioning, the members of the administrative committee including the Chairman are responsible for payment of tax, towards the sale of sand dredged for which they collected at the relevant time, going by the Section 29(3). Therefore, the proceedings initiated

against the petitioner as well as others are perfectly legal.

The fact that the petitioner was a member/Chairman of the administrative committee of the society during January and February 2012 and that the society was engaged in dredging and sale of sand at the relevant time are not disputed. It is a case where the society does not have any asset. In the above circumstances, the proceedings initiated against the petitioner and other members of the administrative committee at the relevant time, was only legal, in terms of Section 29(3) read with Explanation I under Section 2(xv)(e) of the KVAT Act. Therefore I do not find any reason to interfere with the impugned action under challenge.

Hence the writ petition fails and is dismissed.

Sd/-
P.V.ASHA,
JUDGE.

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