IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 23822 of 2015 (C)

PETITIONERS :
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1. M/S.PBC INTERNATION
   1438/C, NH BYE PASS JUNCTION, VENGERI KOZHIKODE 673010
   REPRESENTED BY ITS MANAGING PARTNER, M.SHARIL KUMAR
   S/O.LATE M.UNNEERI, RESIDING AT MOOTHAT HOUSE,
   VENGERI POST, KOZHIKODE TALUK, KOZHIKODE 673010

2. SHARIL KUMAR, AGED 42 YEARS,
   S/O.(LATE) M.UNNEERI, RESIDING AT MOOTHAT HOUSE,
   VENGERI POST, KOZHIKODE TALUK, KOZHIKODE 673010

BY ADVS.SRI.PRATHAP. S.R.K.
SRI.V.G.SURENDRAN
SRI.VENU VALIYA PARAMBIL

RESPONDENTS :
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1. SECRETARY TO GOVERNMENT OF KERALA
   TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM 695001

2. THE COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWER, KILLIPALLAM, KARAMANA P.O.,
   THIRUVANANTHAPURAM 695002

3. THE DY COMMISSIONER OF COMMERCIAL TAXES (APPEAL)
   SALES TAX COMPLEX, JAWAHAR NAGAR, ERANHIPALLAM
   KOZHIKODE 673006

4. THE INSPECTING ASSISTANT COMMISSIONER (INTELLIGENCE)
   OFFICE OF THE DY. COMMISSIONER OF COMMERCIAL TAXES,
   SALES TAX COMPLEX, JAWAHAR NAGAR, ERANHIPALLAM
   KOZHIKODE 673006

5. THE SALES TAX OFFICER (RECOVERY)
   OFFICE OF THE DY. COMMISSIONER OF COMMERCIAL TAXES
   SALES TAX COMPLEX, JAWAHAR NAGAR, ERANHIPALLAM
   KOZHIKODE 673006

BY GOVERNMENT PLEADER SRI. LIJU V. STEPHEN

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

bp

WP(C).No. 23822 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE PARTNERSHIP DEED DATED 21.02.2014 EXECUTED BY THE 2ND PETITIONER AND HIS MOTHER.

P2: TRUE COPY OF THE DEATH CERTIFICATE NO.D0020171-1312202 ISSUED BY THE REGISTRAR OF BIRTH AND DEATH.

P3: TRUE COPY OF THE CERTIFICATE OF REGISTRATION UNDER TIN 32110778094 C DATED 22.01.2010 ISSUED BY THE COMMERCIAL TAX OFFICER, 2ND CIRCLE, KOZHIKODE.

P4: TRUE COPY OF THE POSSESSION NOTICE DATED 26.04.2012 ISSUED BY THE SPECIAL TAHALDAR.

P5: TRUE COPY OF THE WRITTEN SUBMISSION DATED 14.05.2012 ADDRESSED TO COMMERCIAL TAX OFFICER, IIND CIRCLE, KOZHIKODE.

P6: TRUE COPY OF THE RECEIPT NO.01/11301127963 DATED 10.02.2014 SHOWING THE REMITTANCE OF FEE FOR LICENSE.

P7: TRUE COPY OF THE CERTIFICATE OF REGISTRATION BEARING TIN NO.3210798094 ISSUED BY THE COMMERCIAL TAX OFFICER, 2ND CIRCLE, KOZHIKODE

P8: TRUE COPY OF THE SHOP INSPECTION REPORT NO. 219718 DT 11-2-2014 ALONG WITH STOCK LIST.

P9: TRUE COPY OF THE SHOP INSPECTION REPORT NO.219718 DATED 11.02.2014 ALONG WITH STOCK LIST.

P10: TRUE COPY OF THE ORDER NUMBER TCR.35/2013-14 DATED 13.02.2015 ALONG WITH DEMAND NOTICE DATED 13.02.2015.

P11: TRUE COPY OF THE NOTICE IN TCR/III/36/2013-2014 DATED 20.01.2014.

P12: TRUE COPY OF THE APPEAL DATED 14.03.2015 SUBMITTED BEFORE THE 3RD RESPONDENT.

P13: TRUE COPY OF THE DEMAND NOTICE DATED 19.06.2015 FOR RS. 694680/-

P14: TRUE COPY OF THE DEMAND NOTICE DATED 19.06.2015 FOR RS. 694680/-

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.23822 of 2015

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Dated this the 9th day of September, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P10 order of the Intelligence Officer, Squad No.III, Calicut, that imposes a penalty on the petitioner under the Kerala Value Added Tax Act for the offence of storing goods in undeclared godowns. It is seen from the averments in the writ petition that against Ext.P10 order, the petitioner has already filed Ext.P12 appeal before the 3rd respondent and the same is pending consideration before the said respondent. It is in the meanwhile that, when faced with revenue recovery proceedings, the petitioner approached this Court through the present writ petition. When the writ petition came up for admission on 06.08.2015, an interim order of status quo was passed which was extended from time to time and continue to be in force even today.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that inasmuch as the petitioner has already preferred Ext.P12 appeal against Ext.P10 order that imposes a penalty, before the 3rd respondent, and the same is pending consideration before the said respondent, the petitioner cannot simultaneously maintain a writ petition against Ext.P10 order. Accordingly, I dispose the writ petition with a direction to the 3rd respondent to consider and pass orders on Ext.P12 appeal within a period of two months from the date of receipt of a copy of this judgment after hearing the petitioner. I make it clear that, till such time as orders are passed by the 3rd respondent, as directed, and communicated to the petitioner, coercive steps for recovery pursuant to Exts.P13 and P14 shall be kept in abeyance.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns