IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(C).No. 25086 of 2015 (L)

PETITIONER(S):

HYCINTH MARY,
PROPRIETRIX, LAKE SURYA HOUSE BOAT, ARATTUKULAM,
ASRAMAM WARD, AVALOOKKUNNU P.O., ALAPPUZHA-688006.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.D.VENUGOPAL

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER (LT)
O/O. DEPUTY COMMISSIONER, MELUVALLIL BUILDING,
KALLUPALAM, ALAPPUZHA-688001.

2. THE DEPUTY TAHSILDAR (RR)
TALUK OFFICE, AMBALAPPUZHA, ALAPPUZHA-688001.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-09-2015, ALONG WITH WPC. 25087/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 25086 of 2015 (L)
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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **TRUE COPY OF THE PERMISSION FOR PAYMENT OF TAX DATED 31.5.13 ISSUED U/S. 5A OF THE KTL ACT FOR THE YEAR 13-14 BY THE IST RESPONDENT TO THE PETITIONER.**

EXHIBIT P2: **TRUE COPY OF THE PERMISSION FOR PAYMENT OF TAX DATED 8.5.14 ISSUED U/S. 5A OF THE KTL ACT FOR THE YEAR 14-15 BY THE IST RESPONDNET TO THE PETITIONER.**

EXHIBIT P3: **TRUE COPY OF THE CERTIFIED ASSESSMENT ORDER ALONG WITH DEMAND NOTICE DATED 30.8.14 FOR THE YEAR 2013-14 ISSUED BY IST RESPONDENT TO PETITIONER.**

EXHIBIT P4: **TRUE COPY OF CERTIFIED ASSESSMENT ORDER ALONG WITH DEMAND NOTICE DATED 30.8.14 FOR THE PERIODS 4/14 TO 6/14 FOR THE YEAR 2014-15 ISSUED BY THE IST RESPONDENT TO PETITIONER.**

EXHIBIT P5: **TRUE COPY OF THE RR NOTICE ISSUED BY 2ND RESPONDENT TO THE PETITIONER.**

EXHIBIT P6: **TRUE COPY OF THE RR NOTICE ISSUED U/S.7 OF THE RR ACT DATED 7.3.15 BY 2ND RESPONDENT TO THE PETITIONER DEMANDING LUXURY TAX, INTEREST, COLLECTION CHARGES AND DEMAND NOTICE FEE FOR THE PERIODS 4/14 TO 6/14.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.25086 of 2015

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W.P.(C).No.25087 of 2015

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Dated this the 8th day of September, 2015

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

Since the issue involved in both these writ petitions is the same they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to the facts and the exhibits is from W.P.(C).No.25086 of 2015.

2. The petitioner is an assessee under the Kerala Tax on Luxuries Act, 1976 and is engaged in the business of renting out a house boat with two Air Conditioned bedrooms in the name and style of “Lake Surya”. For the purposes of assessment under the Kerala Tax on Luxuries Act, the petitioner had opted for the payment of tax on compounding basis as provided under Section 5A of the Act. The option was exercised in respect of the assessment years 2013-2014 and 2014-2015 respectively. The 1st respondent, acting on the application preferred by the petitioner for payment of tax on compounding basis, accorded permission for payment of tax under Section 5A of the Act and fixed the compounding fee at Rs.22,000/-

per year and Rs.1,840/- per month. The petitioner was accordingly liable to pay the compounding fee of Rs.22,000/- in 12 equal monthly instalments of Rs.1,840/- each. It is not in dispute that the petitioner failed to comply with the monthly payment of the instalments fixed under the compounding scheme. The 1st respondent, however, instead of cancelling the application for compounding, proceeded to issue a notice to the petitioner under Section 6 (2) and (3) of the Kerala Tax on Luxuries Act proposing to complete an assessment on best judgment basis as contemplated under the said Section. Although the petitioner preferred a detailed reply to the said notice, the 1st respondent proceeded to pass Ext.P3 order of assessment, and issued Ext.P4 demand notice to the petitioner, after completing the regular assessment on best judgment basis. Thereafter, Exts.P5 and P6 revenue recovery notices were also issued to the petitioner for recovery of the amounts confirmed against the petitioner by the assessment orders referred to above. In W.P.(C).No.25087 of 2015, the facts are identical save in respect of the compounding fee fixed, which was in an amount of Rs.29,000/- that was payable in 12 equal monthly instalments of Rs.2,420/- each. In the said writ petition also Exts.P3 assessment order as well as Ext.P4 demand notice and Ext.P5 revenue recovery notice are impugned.

3. The contention of the petitioner in both the writ petitions is essentially that, insofar as he had opted for payment of tax on compounded basis under Section 5A of the Act, even if there is a default in payment of the instalments, the option available to the respondents was only to proceed with the revenue recovery steps for recovery of the amounts defaulted by the petitioner. Counsel for the petitioner would contend that, the 1st respondent did not have the jurisdiction to complete a regular assessment on best judgment basis in respect of the petitioner during the period when he had opted for payment of tax on compounded basis.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents. The learned Government Pleader would submit that, the provision of Section 6 of the Kerala Tax on Luxuries Act would clearly apply to cover situations were a person, who had initially opted for payment of tax on compounded basis under Section 5A of the Act, had since defaulted in complying with the provisions governing payment of tax. It is his specific contention that, when an assessee opts for the method of payment of tax on compounded basis and defaults in payment of tax

under the said scheme, then the assessee would forfeit his right to continue under the compounded scheme and the revenue authorities would be well within their rights to complete the assessment for the said year on regular basis as contemplated under Section 6.

5. I have considered the rival submissions. On a perusal of Section 5A of the Kerala Tax on Luxuries Act, it is evident that, the scheme of compounding that is envisaged therein is a code in itself. There are provisions which deal with the manner in which the compounding application is to be filed by the assessee and processed by the department. The provisions of Section 5A also deal with the determination by the assessing authority of the monthly instalment of tax that is required to be paid by an assessee under the scheme. Section 5 A (6) which is relevant for the purposes of the instant case, states that, if the tax determined is not paid as specified in Sub Section 5, **it** shall be recovered along with penalty in accordance with the provisions of the Act. A plain reading of the said provision therefore makes it unambiguously clear that, if an assessee who had opted for payment of tax on compounded basis under Section 5A of the Kerala Tax on Luxuries Act, defaults in payment of any of the instalments that is fixed in relation to the said assessee, then the

revenue authorities will be well within their rights to recover the defaulted instalments in accordance with the provisions of the Act and even resort to revenue recovery proceedings for recovering the said amounts. There are also penal provisions which are included in the Scheme of compounding, under Section 5A of the Kerala Tax on Luxuries Act. The issue that arises for consideration, however, is whether the revenue authorities can, while the option exercised by the assessee for payment of tax on compounded basis under Section 5A subsists, resort to a simultaneous assessment on regular basis as contemplated under Section 6 of the Kerala Tax on Luxuries Act. In this connection, it is relevant to note the decisions of the Supreme Court in **Bhima Jewellery v. Assistant Commissioner (assessment), Kerala and Another [2014 (71) VST 110 (SC)],** and **Koothattukulam Liquors v. Deputy Commissioner of Sales Tax [2014 (80) KarLJ 101 (SC)]= [(2014) 72 VST 353 (SC)]** wherein it has been held that, once a compounding option is availed by the assessee and accepted by the revenue, it is not permissible for either side to withdraw from the said option. Taking cue from the said decisions, I am of the view that, in the instant case, while it would be open to the Revenue Department to proceed against the petitioner for recovery of the defaulted instalments under the scheme of compounding under Section 5A of the Act, their action in completing a regular assessment under Section 6 of the Kerala Tax on Luxuries Act is clearly illegal. Accordingly, I quash Exts.P3 and P4 orders, that cover the period from 01.04.2013 to 31.03.2014 and 01.04.2014 to 30.06.2014, in both the writ petitions and the consequential recovery notices namely, Exts.P5 and P6 in W.P.(C).No.25086 of 2015 and Ext.P5 in W.P.(C).No.25087 of 2015, and declare that, the assessment of the petitioners for the assessment years 2013-2014 and 2014-2015 shall be in accordance with the option exercised by them under Section 5A of the Kerala Tax on Luxuries Act. The amounts, if any, remitted by the petitioners pursuant to the orders that have been quashed in these writ petitions shall be adjusted towards any liability flowing from the default of the petitioners under the scheme of compounding under Section 5A of the Act.

The writ petitions are disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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