IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

WP(C).NO. 25496 OF 2015 (J)

PETITIONER(S):

P.J.MATHEW
PROPRIETOR, ROSE CRUISE HOUSE BOAT, MALIYAKKAL
PUTHANPURAYIL HOUSE, MULLAKKAL, ALAPPUZHA 688 001.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS
SRI.D.VENUGOPAL

RESPONDENT(S):

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1. THE INTELLIGENCE OFFICER (INVESTIGATION BRANCH)
COMMERCIAL TAXES, CIVIL STATION ANNEX
ALAPPUZHA 688 011.

2. THE COMMERCIAL TAX OFFICER (LT)
O/O. DEPUTY COMMISSIONER, ALAPPUZHA 688 001.

BY GOVERNMENT PLEADER SMT.K.T LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 25496 OF 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE CERTIFICATE OF REGISTRATION DATED 26.10.10 ISSUED BY THE REGISTERING AUTHORITY, PORT DIRECTORATE, ALAPPUZHA.

EXHIBIT P2. COPY OF THE NOTICE DATED 18.02.14 ISSUED BY IST RESPONDENT TO THE PETITIONER PROPOSING TO IMPOSE PENALTY U/S. 67 (1) OF THE KVAT ACT.

EXHIBIT P3. COPY OF THE REPLY DATED 27.6.15 ALONG WITH RECEIPT OF MONEY DATED 7.11.11 SUBMITTED BEFORE IST RESPONDENT.

EXHIBIT P4. COPY OF THE PENALTY ORDER DATED 22.7.15 ISSUED BY IST RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C).No.25496 of 2015

...

Dated this the 23rd day of December, 2015

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

The challenge in the writ petition is against Ext.P4 penalty order whereby a penalty has been imposed on the petitioner in connection with the sale of a house boat. It is the contention of the petitioner in the writ petition that he is not a dealer for the purposes of the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act'), and hence, although there was a sale of a house boat, the said transaction will not attract tax under the KVAT Act since he does not satisfy the definition of a dealer under the KVAT Act. It is pointed out that, in Ext.P4 penalty order, this aspect has not been considered by the 1st respondent, and further, there has been no assessment under the KVAT Act in relation to the petitioner for the aforementioned transaction and, in cases where tax liability itself is in dispute the penalty order, if any, must necessarily follow the assessment order.

2. I have heard the learned counsel for the petitioner and the

learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find from Ext.P4 order that the 1st respondent proceeds on the assumption that the petitioner is a dealer, and thereafter, finds that the transaction in question would attract tax under the KVAT Act, and double the amount of tax is imposed on the petitioner by way of penalty. This Court has on a number of occasions re-iterated that in matters where the dispute concerns the very taxability of the transaction, then the penalty orders to be passed must necessarily follow the assessment orders, since it is in the assessment proceedings that the tax liability of the assessee can be ascertained by following the procedure contemplated in Section 21 to Section 25 of the KVAT Act. Inasmuch as in the instant case, the liability to tax of the petitioner has not been determined by the assessing authority under KVAT Act, I am of the view that, the penalty order, which proceeds on a presumption with regard to the liability of the petitioner to pay tax, cannot be legally sustained. Accordingly, I quash Ext.P4 order and direct that the penalty proceedings against the petitioner in respect of the transaction in question must await

the completion of assessment proceedings, if any, against the petitioner.

The writ petition is disposed of as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/23.12.15