IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 26128 of 2015 (M)

PETITIONER(S):

GREEN TRADERS, #1404, 4TH FLOOR, HILITE BUSINESS PARK
HILITE CITY, NH THODAYAD BYEPASS ROAD, CALICUT-673 014
REPRESENTED BY ITS PROPRIETOR, SHAHANAS PALAKKAL
S/O.ABDUL SATHAR, AGED 28 YEARS,RESIDING AT PALAKKAL HOUSE
EDAYAR NORTH P.O., VALANCHERY VIA, VALANCHERY.

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI

RESPONDENT(S):

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1. COMMERCIAL TAX OFFICER
KOTTAKKAL, MALAPPURAM-676 503.

2. THE STATION HOUSE OFFICER
VALANCHERY POLICE STATION, VALANCHERY
MALAPPURAM DISTRICT-676 552.

R BY GOVERNMENT PLEADER, SRI. LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 26128 of 2015 (M)

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1.	**TRUE COPY OF THE LICENCE N.A6.709/12-13 ISSUED BY THE VALANCHERY GRAMA PANCHAYATH TO THE PETITIONER FOR THE DISTRIBUTION OF WATE MANAGEMENT EQUIPMENTS AND AS WASTE SOLUTION PROVIDERS, UPTILL 31/3/2013.**
EXT.P2.	**TRUE COPY OF THE LICENCE N.A6.1031/2014-15 ISSUED BY THE VALANCHERY GRAMA PANCHAYATH TO THE PETITIONER FOR THE DISTRIBUTION OF WATE MANAGEMENT EQUIPMENTS AND AS WASTE SOLUTION PROVIDERS, UPTILL 31/3/2013.**
EXT.P3.	**TRUE COPY OF THE ACKNOWLEDGMENT DATED 18/3/2015 ISSUED BY THE DEPARTMENT OF INDUSTRIES, STATE OF KERALA TO THE PETITIONER FOR MANUFACTURE OF ENERGY EQUIPMENT'S AND SOLUTIONS, MANUFACTURING, ASSEMBLING AND SUPPLY OF MECHANICAL ELECTRICAL EQUIPMENT'S AND ALL GREEN TECHNOLOGY PROVIDERS.**
EXT.P4.	**TRUE COPY OF THE PHOTOGRAPHS OF BUS SHELTER CONSTRUCTED BY THE PETITIONER NEAR CHALLISERY SCHOOL.**
EXT.P5.	**TRUE COPY OF THE NOTICE DATED 28/3/2015 ISSUEDBY THE 1ST RESPONDENT TO THE PETITIONER SHOWING ITEMS ALLEGEDLY PURCHASED BY HIM FOR THE YEAR 2013-14.**
EXT.P6.	**TRUE COPY OF THE NOTICE DATED 28/3/2015 ISSUEDBY THE 1ST RESPONDENT TO THE PETITIONER SHOWING ITEMS ALLEGEDLY PURCHASED BY HIM FOR THE MONTHS FROM APRIL 2014 TO AUGUST 2014.**
EXT.P7.	**TRUE COPY OF THE RECEIPT DATED 30/6/2015 GIVEN TO THE PETITIONER ON FILING THE COMPLAINT**
EXT.P8.	**TRUE COPY OF THE FIR ALONG WITH THE COMPLAINT PREFERRED BY THE PETITIONER**
EXT.P9.	**TRUE COPY OF THE LETTER DATED 5/7/2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
EXT.P10.	**TRUE COPY OF THE REMAND REPORT OF REFLECTING THE REMAND OF THE PROPRIETOR OF M/S. SHARKLINE INDUSTRIES.**

RESPONDENTS' EXHIBITS
-------------------------------------- NIL

// True copy //

PA to Judge

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26128 of 2015

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Dated this the 16th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P5 and P6 notices dated 28.03.2015 issued by the 1st respondent proposing an assessment under the Kerala Value Added Tax Act. The main ground of challenge in the writ petition against the said notices is that the 1st respondent, according to the petitioner, is proposing to assess the petitioner for a turnover that does not pertain to any business done by the petitioner and that a large amount of goods were sold by M/s. Shark Line Industries, illegally using the TIN number and forging the seal of the petitioner, for the purposes of supplying goods to a 3rd party. The learned counsel for the petitioner would contend that, in connection with the said action of M/s. Shark Line Industries, the petitioner has also filed a police complaint and the same is pending consideration before the police authorities. The prayer in the writ petition is for a direction to the 1st respondent not to proceed further with Exts.P5 and P6 notices, till such time as the investigation in connection with the complaint filed by the petitioner with the police authorities is completed.

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

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the challenge in the writ petition is against Exts.P5 and P6 pre-assessment notices. In my view, the petitioner has an effective alternate remedy in that he can approach the 1st respondent and file his objection to the proposed assessment by citing the fact of filing of police complaint against M/s. Shark Line Industries, who, according to the petitioner, has illegally used the TIN number and forged the seal of the petitioner, for the purposes of effecting supply of the goods to the 3rd person. It is only after consideration of the objection of the petitioner that the 1st respondent can complete the proceedings now initiated by Exts.P5 and P6 notices. The writ petition at this stage, challenging Exts.P5 and P6 notices, under Article 226 of the Constitution of India, is not maintainable, since it is premature. Thus, relegating the petitioner to the alternate remedy of approaching the 1st respondent with objections against Exts.P5 and P6 notices dated 28.03.2015, the writ petition is dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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