IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

WP(C).No. 26438 of 2015 (D)

PETITIONER(S):

C.K.SYED,
PROPRIETOR, TRADEWELL INTERNATIONAL SERVICES,
CHERODATHU HOUSE, THOTTUMUGHOM P.O.,
ALUVA, ERNAKULAM, PIN - 683 105.

BY ADVS.SRI.MOHAMMED RAFIQ
SRI.M.G.SHAJI

RESPONDENT(S):

1.THE COMMERCIAL TAX OFFICER - II,
ALUVA, ERNAKULAM, PIN - 683 101.

2.THE DEPUTY TAHSILDAR,
REVENUE RECOVERY, ALUVA, ERNAKULAM,
PIN - 683 101.

3.THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN 695 001.

R BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.26438/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ASSESSMENT ORDER NO.32150760985/2012-13 DATED 28.2.2015 FOR THE YEAR 2012-13 PASSED BY THE 1ST RESPONDENT UNDER SECTION 25(1) OF THE KERALA VALUE ADDED TAX ACT, 2003.

EXT.P2: COPY OF THE JUDGMENT DATED 25.9.2014 OF THE HON'BLE HIGH COURT OF KERALA IN O.T.REV.49 OF 2014.

EXT.P3: COPY OF THE DEMAND NOTICE NO.R6-892/15/ST DATED 2.5.2015 ISSUED BY THE 2ND RESPONDENT UNDER SECTION 7 OF THE KERALA REVENUE RECOERY ACT, 1968.

EXT.P4: COPY OF THE DEMAND NOTICE NO.R6-892/15/ST DATED 2.5.2015 ISSUED BY THE 2ND RESPONDENT UNDER SECTION 34 OF THE KERALA REVENUE RECOVERY ACT, 1968.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.26438 OF 2015 (D)

Dated this the 2nd day of September, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, 2003 [hereinafter referred to as the 'KVAT Act'], is aggrieved by Ext.P1 assessment order, passed for the assessment year 2012-13, in terms of Section 25 of the KVAT Act. The assessment was originally concluded under Section 21 of the KVAT Act, and by Ext.P1 order, the said concluded assessment was reopened inter alia on the ground that audit report in Form-13 and audited statement in Form-13A were not submitted by the petitioner. In the writ petition, Ext.P1 order is impugned.

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

3. On a consideration of the facts and circumstances of the case and also the submissions made across the bar, I find that the issue as to whether the assessment under Section 25 can be completed on best

judgment basis solely on the ground that, audited statement in Form-13 and 13A are not filed, has already been decided in favour of the assessee, through Ext.P2 judgment of the Division Bench of this Court. In that view of the matter, Ext.P1 order of the 1st respondent, to the extent it does not rely on any other material, other than the fact of non production by the petitioner of Form-13 and 13A, while completing the reassessment against him, cannot be legally sustained. Accordingly, I quash Ext.P1 order of the 1st respondent and direct him to pass fresh orders, pursuant to the notice dated 18.11.2014 issued to the petitioner, after perusing the books of accounts and other documents relied upon by the petitioner to substantiate his contentions regarding the correctness of the accounts maintained by him. The 1st respondent shall pass fresh orders in the matter within a period of three months from the date of receipt of a copy of this judgment. The 1st respondent shall afford an opportunity of hearing to the petitioner and also advert to the various materials that are relied upon by the petitioner to substantiate his contentions on merits. To enable the 1st respondent to do this, I direct the petitioner to appear before the 1st respondent at 11.00 a.m. on 17.9.2015 for a hearing in connection with the fresh adjudication that is directed in this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp