IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

W.P.(C).No. 28672 of 2015 (H)

PETITIONER :

PROFICIENT AUTOMATION & CONTROLS PVT. LTD.,
M.K.K.NAIR ROAD,
PALARIVATTOM,
NOW SHIFTED TO 33/656 C1 & C2,
ARAKKAKADAVU ROAD,
THAIKKAVU JN.,
VENNALA P.O.,
KOCHI-682 028.
(REPRESENTED BY PRAVEEN KUMAR P.,MANAGING DIRECTOR).

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR
SMT.V.P.SEENA DEVI

RESPONDENTS :

1. COMMERCIAL TAX OFFICER,
KVAT CIRCLE-I,
KALAMASSERRY-682 022.

2. ASSISTANT COMMISSIONER,
COMMERCIAL TAXES,
SPECIAL CIRCLE-III,
ERNAKULAM-682 015.

BY GOVERNMENT PLEADER : SRI. LIJU.V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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W.P.(C).No. 28672 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	TRUE COPY OF THE ANNUAL RETURN FOR 2006-07 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
EXT.P2	TRUE COPY OF THE REPLY DATED 01.10.2007 ALONG WITH COPIES OF THE DECLARATIONS IN FORM D, EI FORM ETC. FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
EXT.P3	TRUE COPY OF THE EXTRACT OF THE LOCAL DELIVERY BOOK FOR 01.10.2007 KEPT BY THE PETITIONER CONTAINING ACKNOWLEDGEMENT OF THE 1ST RESPONDENT.
EXT.P4	TRUE COPY OF THE NOTICE DATED 30.10.2009 ISSUED UNDER SECTION 25(1) BY THE 2ND RESPONDENT.
EXT.P5	TRUE COPY OF THE REPLY DATED 23.11.2009 FILED BY PETITIONER BEFORE THE 2ND RESPONDENT.
EXT.P6	TRUE COPY OF THE NOTICE DATED 30.10.2009 ISSUED UNDER THE CST ACT BY THE 2ND RESPONDENT.
EXT.P7	TRUE COPY OF THE REPLY DATED 23.11.2009 FILED BY PETITIONER BEFORE THE 2ND RESPONDENT.
EXT.P8	TRUE COPY OF THE ASSESSMENT ORDER BEARING NO. 32071248584/2006-07 DATED 20.08.2014 ISSUED BY THE 2ND RESPONDENT UNDER THE KVAT ACT.
EXT.P9	TRUE COPY OF THE ASSESSMENT ORDER BEARING NO. 320712485854/2006-07 DATED 20.08.2014 ISSUED BY THE 2ND RESPONDENT UNDER THE CST ACT.

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W.P.(C).No. 28672 of 2015 (H)

EXT.10	**TRUE COPY OF THE JUDGMENT DATED 24.09.2014 IN W.P.(C).NO.24816/2014 OF THIS HON'BLE COURT.**
EXT.P11	**TRUE COPY OF THE NOTICE DATED 15.10.2014 ISSUED BY THE 2ND RESPONDENT.**
EXT.P12	**TRUE COPY OF THE REPLY DATED 24.10.2014 FILED BY PETITIONER BEFORE THE 2ND RESPONDENT.**
EXT.P13	**TRUE COPY OF THE REPLY DATED 25.10.2014 FROM THE 1ST RESPONDENT TO THE PETITIONER UNDER THE RTI ACT.**
EXT.P14	**TRUE COPY OF THE REPLY DATED 09.01.2015 FILED BY PETITIONER BEFORE THE 2ND RESPONDENT.**
EXT.P15	**TRUE COPY OF THE ASSESSMENT ORDER BEARING NO. 32071248584/2006-07/KVAT DATED 04.08.2015 ISSUED BY THE 2ND RESPONDENT UNDER THE KVAT ACT.**
EXT.P16	**TRUE COPY OF THE ASSESSMENT ORDER BEARING NO. 32071248584/2006-07/CST DATED 04.08.2015 ISSUED BY THE 2ND RESPONDENT UNDER THE CST ACT.**

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO. 28672 OF 2015 (H)

Dated this the 23rd day of September, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P15 and P16 assessment orders passed by the 2nd respondent completing the assessments of the petitioner for the assessment year 2006-07 under KVAT and CST Act, respectively. The case of the petitioner in the writ petition is essentially that, notwithstanding the clear directions given in Ext.P10 judgment, which quashed the earlier assessment orders passed by the Assessing Authority and directed the Assessing Authority to consider the documents and other records produced by the petitioner before completing the assessment against the petitioner for the aforementioned assessment year, the 2nd respondent through a laconic order, bereft of any reasoning, confirmed the assessment against the petitioner through Exts.P15 and P16 orders. It is the stand of the petitioner that the said orders are vitiated by a patent non-application of mind and therefore, ought to be quashed by this Court.

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

On a consideration of the facts and circumstances of the case as also submissions made across the bar, I find that, pursuant to Ext.P10 judgment of this Court, when the petitioner was asked to submit the relevant documents, by Ext.P12 letter in response to Ext.P11 notice issued to him, the petitioner once again wrote to the 2nd respondent that the relevant documents in original had already been submitted to the Commercial Tax Officer, Kalamassery on an earlier occasion and therefore, the 2nd respondent should pass an order considering those documents. There is no material on record to suggest that the petitioner had produced copies of the original records before the 2nd respondent pursuant to Ext.P11 notice that was issued to him. Under the said circumstances, I see no reason to interfere with Exts.P15 and P16 orders in these proceedings under Article 226 of the Constitution of India, more so, when the finding in Exts.P15 and P16 orders is justified on the basis of the non-availability of records that ought to have been produced by the petitioner. Under the circumstances, I dismiss the writ petition in its challenge against Exts.P15 and P16 orders, leaving it open to the petitioner to approach the Appellate Authority under the KVAT/CST Act for redressal of the grievance against Exts.P15 and P16 orders. Taking note of the submission of the counsel for the petitioner that the petitioner would require two weeks time to file an appeal, I direct that coercive steps for recovery of amounts confirmed against the petitioner by Exts.P15 and P16 orders shall be kept in abeyance for a period of two weeks so as to enable the petitioner to approach the Appellate Authority through appeals against Exts.P15 and P16 orders.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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