IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 29407 of 2015 (A)

PETITIONER :

SREEGOKULAM FOOD & BEVERAGES (P) LTD.
NO. 18/126, A.R. TOWER, ANAMALA JUNCTION,
CHALAKUDY - 680307, REPRESENTED BY
SRI. BINU JOSEPH, MANAGER

BY ADVS.SRI.VIJAYAN. K.U.
SRI.K.V.VIMAL

RESPONDENTS :

1. COMMERCIAL TAX OFFICER,
   1ST CIRCLE, KALAMASSERRY - 682022.

2. INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, ERNAKULAM AT KAKKANAD - 682050

BY GOVERNMENT PLEADER SRI. LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 29407 of 2015 (A)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE NOTICE NO. 32070256222/2009-10 DT 7/7/2015 ISSUED BY THE R1.

P2: COPY OF THE REPLY DT 24/7/2015 SUBMITTED BY THE PETITIONER - COMPANY.

P3: COPY OF THE FINALIZED ESCAPED ASSESSMENT FOR 2009-10 AS PER ORDER DT 31/7/2015.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 29407 of 2015
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Dated this the 29th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 assessment order under the Kerala Value Added Tax Act, hereinafter referred to as the "KVAT Act", for the assessment year 2009-2010. The challenge against Ext.P3 order is essentially premised on the issue of limitation, in that according to the petitioner, the authorities could not have initiated proceedings under Section 25(1) of the KVAT Act, after a period of five years from the end of the assessment year 2009-2010.

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

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that although the learned counsel for the petitioner would vehemently urge the point of limitation, the said aspect has not been raised before the authorities either in the objection to the pre-assessment notice or at the time of hearing before the assessing authority. It is under those circumstances that the assessing authority proceeded to pass

Ext.P3 order confirming the proposals in the pre-assessment notice as against the petitioner. I find that the petitioner has got an effective alternate remedy against Ext.P3 order in the form of an appeal before the first appellate authority under the KVAT Act. I, therefore, dismiss the writ petition in its challenge against Ext.P3 order and relegate the petitioner to the appellate remedy under the KVAT Act, against Ext.P3 order.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das