

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. 29530 of 2015 (M)

PETITIONER:

**MR.M.RAJAN, CONTRACTOR,
BUILDING NO.23/594, SHANTI,
KALLAI P.O., KOZHIKODE.**

**BY ADVS.SMT.K.LATHA
SMT.M.K.HAJARA
SRI.C.RAMACHANDRAN**

RESPONDENT(S):

- 1. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO THE GOVT. OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE COMMERCIAL TAX OFFICER,
WORKS CONTRACT, KOZHIKODE-673 006.**
- 3. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, ST COMPLEX, CALICUT-6.**

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-09-2015 ALONG WITH WPC.29527/2015 & CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT-P1: THE TRUE COPY OF CERTIFICATE OF REGISTRATION CERTIFICATE IN FORM NO.4 OF THE KERALA GENERAL SALES TAX ACT ISSUED TO THE PETITIONER DATED 21.6.2001.
- EXHIBIT-P2: THE TRUE COPY OF APPLICATION IN FORM NO.1 DATED 20.4.2005, AND DATED 2.5.2007 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
- EXHIBIT-P3: THE TRUE COPY OF THE VAT REGISTRATION CERTIFICATE DATED 2.6.2007 ISSUED TO THE PETITIONER WITH TIN NO.32458051115.
- EXHIBIT-P4: THE TRUE COPY OF TWO LIABILITY CERTIFICATES IN FORM 20B ISSUED TO THE PETITIONER.
- EXHIBIT-P5: THE TRUE COPY OF THE KVAT RENEWAL APPLICATION DATED 02.05.2007 ALONG WITH THE E CHALAN FOR THE REGISTRATION RENEWAL FEE FOR THE YEAR 2010-2011 AND FOR THE YEAR 2011-2012.
- EXHIBIT-P6: THE TRUE COPY OF THE PRE ASSESSMENT NOTICE NO.K.E.12-352/2013/08-09 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER U/S 25 OF THE KVAT ACT DATED 28.01.2015.
- EXHIBIT-P7: THE TRUE COPY OF THE DETAILED REPLY WITHOUT EXHIBITS DATED 25TH DAY OF MAY 2015 AGAINST THIS P6 NOTICE FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
- EXHIBIT-P8: THE TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT DATED 10.8.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). Nos.29527, 29528, 29529 & 29530 of 2015

Dated this the 29th day of September, 2015

JUDGMENT

The challenge in all these writ petitions is against Ext.P6 pre-assessment notice issued to the petitioner under Section 25 of the KVAT Act. The grievance of the petitioner in all these writ petitions is essentially that, although the petitioner has submitted formal objections to Ext.P6 pre-assessment notices issued to the petitioner, and also produced copies of the relevant documents to substantiate his contention on merits. The respondents are proceeding further in the matter without considering any of the materials produced by the petitioner to substantiate his contention on merits. In Ext.P7 written objection filed by the petitioner before the 2nd respondent, the petitioner has sought for copies of various documents to substantiate his contentions with regard to the genuineness of the registration certificate issued to him. The apprehension of the petitioner is essentially that the 2nd respondent may complete the proceedings under Section 25 of the KVAT Act without furnishing copies of documents sought for by the petitioner. It is based on this apprehension, of an improper adjudication on merits, that the petitioner has approached this Court through the present writ petition.

W.P.(C). Nos.29527, 29528, 29529 & 29530 of 2015

2. I have heard Smt.K.Latha, the learned counsel appearing on behalf of the petitioner as also the learned Government Pleader appearing for the official respondents in all these writ petitions.

3. On a consideration of the facts and circumstances of these cases and the submissions made across the Bar, I am of the view that the present writ petitions are premature and that they have been preferred even before the 2nd respondent has had an opportunity to consider the material produced by the petitioner, and pass an order under section 25 of the KVAT Act. I take note however, of the apprehension voiced by counsel for the petitioner that the 2nd respondent may complete the proceedings under section 25 of the KVAT Act without adverting to the materials produced by the petitioner, and by relying on materials which have not been put to the petitioner in the course of adjudication proceedings. I, therefore, direct that the 2nd respondent, while finalizing the proceedings initiated through Ext.P6 notices, shall consider the material produced by the petitioner to substantiate his contention on merits, and also furnish copies of those documents on which the 2nd respondent proposes to rely on while coming to any conclusion against the petitioner, before finalizing

W.P.(C). Nos.29527, 29528, 29529 & 29530 of 2015

the proceedings pursuant to Ext.P6 notice. Needless to say, the petitioner shall also be afforded an opportunity of being heard prior to passing final orders in the matter. Thus, relegating the petitioner to the alternate remedy of getting the matter adjudicated before the 2nd respondent, the writ petitions in their challenge to Ext.P6 notices are dismissed, subject to the onbservations made above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE