

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C).No. 29665 of 2015 (G)

PETITIONER(S):

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

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

RESPONDENT(S):

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

BY GOVT. PLEADER SRI.LIJU V.STEPHEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

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 21.06.2001.**
- EXHIBIT P2: THE TRUE COPY OF APPLICATION FORM NO.1 DATED 20.04.2005, AND DATED 02.05.2007 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**
- EXHIBIT P3: THE TRUE COPY OF THE VAT REGISTRATION CERTIFICATE DATED 02.06.2007 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.12-352/2013/07-08 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 DATED 25TH DAY OF MAY 2015 AGAINST THIS P6 NOTICE FILED BY PETITIONER BEFORE THE SECOND RESPONDENT.**
- EXHIBIT P8: THE TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT DATED 10.08.2015.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.29665 of 2015

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Dated this the 30th day of September, 2015

J U D G M E N T

The challenge in all the writ petition is against Ext.P6 pre-assessment notice issued to the petitioner under Section 25 of the KVAT Act. The grievance of the petitioner in the writ petition is essentially that, although the petitioner has submitted formal objections to Ext.P6 pre-assessment notice, 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.

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

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that the present writ petition is premature as it has 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 notice, 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 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 petition in its challenge to Ext.P6 notice is dismissed, subject to the observations made above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

