IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 30077 of 2015 (H)

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PETITIONER(S) :

AMAL IMBA RAJ, AGED 32 YEARS,
S/O.MOSSES, PROPRIETOR, M/S. MATHA TIMER WORKS,
VADAKKADATHUKAVU P.O., ADOOR, PATHANAMTHITTA DISTRICT,
REP. BY POWER OF ATTORNEY HOLDER,
STANLY ERUTHAYA RAJ M., AGED 39 YEARS, S/O.MOSSES.

BY ADVS.SRI.PRAVEEN K. JOY
SRI.T.A.JOY

RESPONDENT(S) :

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1. **STATE OF KERALA,**
   REP. BY SECRETARY, COMMERCIAL TAX DEPARTMENT,
   SECRETARIAT, TRIVANDRUM-695 001.

2. **ASSISTANT COMMISSIONER (INTELLIGENCE),**
   COMMERCIAL TAXES, ASHRAMAM P.O., KOLLAM-696 001.

3. **INTELLIGENCE OFFICE (IB)-II,**
   COMMECIAL TAXES, KOLLAM-696 001.

4. **COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAX DEPARTMENT, ADOOR-696 018.

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 30077 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS :
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EXHIBIT P1: **THE TRUE PHOTOCOPY OF THE GENERAL POWER OF ATTORNEY DATED 10-04-2013 IN FAVOUR OF STANLY ERUTHAYA RAJ.**

EXHIBIT P2: **TRUE PHOTOCOPY OF THE CERTIFICATE OF REGISTRATION DATED 24-10-2007 OF MATHA TIMBER WORKS.**

EXHIBIT P3: **TRUE PHOTOCOPY OF THE CERTIFICATE OF REGISTRATION OF COMMERCIAL TAXES DEPARTMENT ADOOR, DATED 05-05-52015.**

EXHIBIT P4: **TRUE PHOTOCOPY OF THE TAX INVOICE NO. 211 OF THE PETITIONER.**

EXHIBIT P5: **TRUE PHOTOCOPY OF THE TAX INVOICE NO. 212 OF THE PETITIONER.**

EXHIBIT P6: **TRUE PHOTOCOPY OF THE TAX INVOICE NO. 213 OF THE PETITIONER.**

EXHIBIT P7: **TRUE PHOTOCOPY OF THE TAX INVOICE NO. 214 OF THE PETITIONER.**

EXHIBIT P8: **TRUE PHOTOCOPY OF THE TAX INVOICE NO. 215 OF THE PETITIONER.**

EXHIBIT P9: **TRUE PHOTOCOPY OF THE RELEVANT EXTRACT OF THE TAX ANNUAL RETURN IN FORUM 10 BEFORE THE COMMERCIAL TAX OFFICER, ADOOR DATED 21-05-2014.**

EXHIBIT P10: **TRUE PHOTOCOPY OF THE TAX INVOICE DATED 03-09-2015 OF THE 3RD RESPONDENT.**

EXHIBIT P11: **TRUE PHOTOCOPY OF THE TAX NOTICE DATED 25-09-2015.**

EXHIBIT P12: **THE TRUE PHOTOCOPY OF THE OBJECTIONS BEFORE THE 3RD RESPONDENT.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.
...
W.P.(C).No.30077 of 2015
...
Dated this the 7th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P11 notice issued under Section 67(1) of the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act'), read with Section 74 thereunder, proposing the imposition of penalty on the petitioner for alleged offences under the KVAT Act. In the writ petition, the case of the petitioner is essentially that, while in Ext.P11 notice, he has been afforded an opportunity to compound the offence in lieu of prosecution under Section 74 of the KVAT Act, the compounding fee that is fixed is Rs.1,00,500/-, over and in addition to the tax component of Rs.1,00,500/-, and the petitioner is not in a position to pay the said amount. He therefore prays for a facility of instalments to pay the tax amount and compounding fee.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the

prayer of the petitioner for paying the tax amount or the compounding fee in instalments, in order to avail the compounding facility, cannot be acceded to since the immediate payment of compounding fee is a part of the statutory scheme that offers the assessee an option to compound an offence alleged against him departmentally without going through a procedure of adjudication. Inasmuch as the petitioner does not want to opt for the compounding facility, at the quantum now suggested in Ext.P11 notice, I dispose the writ petition by relegating the petitioner to the alternate remedy against Ext.P11 notice, of preferring detailed objections to the said notice, and getting the matter adjudicated before the 3rd respondent. I take note of the fact that, the petitioner has already preferred Ext.P12 objections. Despite this, however, if the petitioner wants to file any further objection, he may do so within a period of two weeks from the date of receipt of a copy of this judgment. The 3rd respondent shall thereafter proceed to adjudicate the matter, after hearing the petitioner, and pass final orders within one month from the date of hearing.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns