IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 30585 of 2015 (W)

PETITIONER(S):

NORTHSHORE FOODS (P) LTD.,
THUMINADU, KUNJATHOOR P.O.,
MANJESHWAR, KASARAGOD-671 323,
REPRESENTED BY ITS MANAGER
SRI.ANOOP VARGHESE.

BY ADVS.SRI.A.KUMAR,
SRI.P.J.ANILKUMAR,
SMT.G.MINI,
SRI.P.S.SREE PRASAD.

RESPONDENT(S):
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1. DEPUTY COMMISSIONER,
   COMMERCIAL TAXES, KASARAGOD-671 123.

2. INTELLIGENCE OFFICER (IB),
   OFFICE OF INSPECTING ASST. COMMISSIONER (INTELLIGENCE),
   COMMERCIAL TAXES, KASARAGOD-671 121.

3. INSPECTING ASSISTANT COMMISSIONER (REVENUE RECOVERY),
   COMMERCIAL TAXES DEPARTMENT,
   KANHANGAD-671 315.

BY GOVT. PLEADER SRI.LIJU V.STEPHEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 30585 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE PENALTY ORDER DATED 15/03/2013 FOR THE PERIOD 2009-10.
EXT.P2	COPY OF THE PENALTY ORDER DATED 15/12/2012 FOR THE PERIOD 2010-11.
EXT.P3	COPY OF THE PENALTY ORDER DATED 15/03/2013 FOR THE PERIOD 2011-12.
EXT.P4	COPY OF THE ORDER OF THE DEPUTY COMMISSIONER (APPEALS) DATED 14/10/2014.
EXT.P5	COPY OF THE ORDER DATED 19/08/2015 FOR THE PERIOD 2009-10.
EXT.P6	COPY OF THE ORDER DATED 19/08/2015 FOR 2010-11.
EXT.P7	COPY OF THE ORDER DATED 19/08/2015 FOR 2011-12.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.30585 of 2015

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Dated this the 8th day of October, 2015

J U D G M E N T

The petitioner, a private limited company engaged in the sale of ice-creams and frozen desserts, is aggrieved by the steps taken by the respondents to recover amounts confirmed against the petitioner by Exts.P1, P2 and P3 penalty orders for the assessment years 2009-2010, 2010-2011 and 2011-2012 at a time when the petitioner has just been served with copies of the orders passed by the revision authority in revision petitions filed by the petitioner against the said orders, and the time prescribed under the statute for preferring a further revision against the said orders has not expired.

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, as per Section 59 of the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act'), a person objecting to an order passed by the Deputy Commissioner under Section 55 of the Act, has a period of 30 days from the date on which a copy of the order was served on

him, to file an application for revision of such order before the Commissioner of Commercial Taxes. In the instant case, Exts.P5, P6 and P7 orders, against which the petitioner proposes to file a revision before the Commissioner, was served on the petitioner only on 05.10.2015. Accordingly, as per the statutory provisions, the petitioner has to be granted 30 days time from 05.10.2015, to avail his statutory remedy of revision under Section 59 of the KVAT Act. The respondents cannot by invoking the provisions of the Revenue Recovery Act or other coercive proceedings, effectively curtail the statutory period allowed to an assessee for preferring an appeal or revision under the statute before the appellate/revisional authority. Thus, I dispose the writ petition by holding that the recovery proceedings initiated against the petitioner for recovery of amounts confirmed against the petitioner by Exts.P5, P6 and P7 orders shall be kept in abeyance for a period of one month so as to enable the petitioner to approach the revisional authority in terms of Section 59 of the KVAT Act.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns