IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 31235 of 2014 (D)

PETITIONER:

M.M.PRINSON, AGED 25 YEARS,
S/O.M.C MATHEW, RESIDING AT
MARUTHAMTHARA HOUSE,
THRIKKAKKARA P.O,
NEW ADITYA EYE CLINIC, ERNAKULAM 21.

BY ADVS.SRI.K.SHIBILI NAHA
SRI.SAJU RAGHAVAN

RESPONDENT(S):

----

1. STATE OF KERALA,
   REP. BY SECRETARY TO GOVT.,
   DEPT. OF REVENUE,
   THIRUVANANTHAPURAM - 695 001.

2. INTELLIGENCE OFFICER(IB),
   THE DEPARTMENT OF COMMERCIAL TAXES,
   MATTANCHERRY AT MINI CIVIL STATION,
   ALUVA, PIN - 682 101.

3. DEPUTY TAHSILDAR(R.R),
   KANAYANNUR TALUK, ERNAKULAM, PIN - 682 001.

4. THE VILLAGE OFFICER,
   VAZHAKKALA, ERNAKULAM DISTRICT, PIN - 682 001.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 31235 of 2014 (D)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1: TRUE COPY OF NOTICE OF DEMAND ISSUED UNDER SECTION 7 OF THE REVENUE RECOVERY ACT SEEKING REALIZATION OF SUM OF RS.10,000/- DATED 9.6.14.

EXHIBIT P2: TRUE COPY OF DEMAND NOTICE SEEKING REALIZATION OF SUM OF RS.98126/- ISSUED BY THE 3RD RESPONDENT DATED 9.6.14.

EXHIBIT P3: TRUE COPY OF DEMAND NOTICE TO ISSUED BY THE 3RD RESPONDENT SEEKING REALIZATION OF SUM OF RS. 5,19,958/- DATED 9.6.14.

EXHIBIT P4: TRUE COPY OF DEMAND NOTICE SEEKING REALIZATION OF SUM OF RS.4,75,140/- DATED 9.6.14.

EXHIBIT P5: TRUE COPY OF NOTICE U/S. 34 ISSUED BY THE 3RD RESPONDENT DATED 9.6.14.

EXHBIIT P6: TRUE COPY OF OBJECTIONS FILED BY THE PETITIONER ON 19-08-2014.

EXHIBIT P7: TRUE COPY OF ASSESSMENT ORDER ISSUED BY THE 2ND RESPONDENT U/S. 67(1)(A) OF KAVAT ACT FOR THE PERIOD 2009-1010 DATED 25.1.13.

EXHIBIT P8: TRUE COPY OF ASSESSMENT ORDERS PERTAINING TO THE YEAR 2010-2011 IMPOSING PENALTY OF RS.98,126/- DATED 25.1.13.

EXHIBIT P9: TRUE COPY OF ASSESSMENT ORDERS PERTAINING TO THE YEAR 2011-2012 DATED 25.1.13.

EXHIBIT P10: TRUE COPY OF ASSESSMENT ORDERS PERTAINING TO THE YEAR 2012-2013 DATED 25.1.13.

RESPONDENT(S)' EXHIBITS & ANNEXURES:

ANNEXURE R2(A): A TRUE COPY OF THE NOTICE U/S.67(1) DATED 3.4.2013 FOR THE YEAR 2009-2010.

ANNEXURE R2(B): A TRUE COPY OF THE PENALTY ORDER DATED 25.11.2013 FOR THE YEAR 2009-2010.

ANNEXURE R2(C): A TRUE COPY OF THE NOTICE U/S.67(1) DATED 3.4.2013 FOR THE YEAR 2010-2011.

ANNEXURE R2(D): A TRUE COPY OF THE PENALTY ORDER DATED 25.11.2013 FOR THE YEAR 2010-2011.

WP(C).No. 31235 of 2014 (D)

ANNEXURE R2(E):	**A TRUE COPY OF THE NOTICE U/S.67(1) DATED 3.4.2013 FOR THE YEAR 2011-2012.**
ANNEXURE R2(F):	**A TRUE COPY OF THE PENALTY ORDER DATED 25.11.2013 FOR THE YEAR 2011-2012.**
ANNEXURE R2(G):	**A TRUE COPY OF THE NOTICE U/S.67(1) DATED 3.4.2013 FOR THE YEAR 2012-2013.**
ANNEXURE R2(H):	**A TRUE COPY OF THE PENALTY ORDER DATED 25.11.2013 FOR THE YEAR 2012-2013.**

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.31235 OF 2014 (D)

Dated this the 24th day of February, 2015

J U D G M E N T

The petitioner, who had approached this Court, aggrieved by Exts.P1 to P5 notices issued to him under the Kerala Revenue Recovery Act, was served with copies of the penalty orders, on the basis of which the revenue recovery notices were issued, pursuant to an application that he had preferred under the Right to Information Act. It is his case that, inasmuch as Exts.P7 to P10 penalty orders were passed without issuing any notice to him and without hearing him, the said orders are legally unsustainable and consequently, the revenue recovery notices issued to him are also legally unsustainable.

2.I have heard Sri.K.Shibili Naha, the learned counsel appearing for the petitioner as also Sri.Sudheesh Kumar, the learned Government Pleader appearing for the respondents.

3. The learned Government Pleader, on instructions, would submit that the petitioner was in fact served with a notice prior to the

passing of Exts.P7 to P10 orders. It is further pointed out that Exts.P1 to P5 revenue recovery notices were issued in connection with recovery of the penalty amounts confirmed against the petitioner. It is further pointed out that, against Exts.P7 to P10 orders, the petitioner has an effective alternate remedy by way of revision before the revisional authority under the KVAT Act.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that inasmuch as the petitioner has now obtained copies of Exts.P7 to P10 penalty orders, the petitioner has an effective alternate remedy by way of revision before the revisional authority under the KVAT Act. Accordingly, without prejudice to the rights of the petitioner to move the revisional authority under the KVAT Act, against Exts.P7 and P10 orders, I dismiss the writ petition in its challenge against Exts.P1 to P5 notices and Exts.P7 to P10 orders.

Inasmuch as it is the contention of the petitioner that he was not heard prior to the passing of Exts.P7 to P10 orders, I make it clear that if the petitioner prefers the revision petitions against Exts.P7 to

P10 orders, within a period of one month from the date of receipt of a copy of this judgment, then the revisional authority under the KVAT Act, shall consider the revision petitions on merits, and pass orders thereon, within a period of two months thereafter, after hearing the petitioner. I make it clear that recovery of amounts confirmed against the petitioner by Ext.P7 to P10 orders, shall be kept in abeyance till such time as orders are passed by the revisional authority, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp