IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WP(C).No. 31564 of 2015 (U)

PETITIONER(S):

M/S. KERALA SHIPPING & INLAND
NAVIGATION CORPORATION LTD.,
38/924-A, UDAYANAGAR ROAD, GANDHINAGAR,
KOCHI-20, A GOVERNMENT OF KERALA UNDERTAKING,
REPRESENTED BY SRI.RAJESH K., FINANCE MANAGER.

BY ADVS.SRI.E.P.GOVINDAN
SMT.G.DEEPA
SRI.K.G.SOMANATH

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   SECOND CIRCLE, COMMERCIAL TAXES, THRIPUNITHURA,
   682 301.

2. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   KERALA AT PUBLIC BUILDING, VIKAS BHAVAN P.O.,
   TRIVANDRUM-695 001.

3. **THE STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
   GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 31564 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE REVISED ASSESSMENT ORDER DT.14.9.2015 PASSED BY THE FIRST RESPONDENT FOR THE YEARS 2009-2010.

EXHIBIT-P2: TRUE COPY OF THE ASSESSMENT ORDER DT.14.9.2015 PASSED BY THE FIRST RESPONDENT UNDER CST ACT.

EXHIBIT-P3: TRUE COPY OF THE REVISED ASSESSMENT ORDER DT.10.3.2015 PASSED BY THE FIRST RESPONDENT FOR THE YEARS 2009-10.

EXHIBIT-P4: TRUE COPY OF THE JUDGMENT DT.29.6.2015 IN W.P.(C) 12138/15 PASSED BY THIS HON'BLE COURT.

EXHIBIT-P5: TRUE COPY OF THE REPLY DT.17.2.2015 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXHIBIT-P6: TRUE COPY OF THE REPLY DT.4.3.2015 FILED BY THE PETITIONER.

EXHIBIT-P7: TRUE COPY OF THE AGREEMENT DT.22.6.2009 BETWEEN THE PETITIONER COMPANY AND FACT LTD.

EXHIBIT-P8: TRUE COPY OF THE WORK ORDER DT.30.3.2010 ISSUED BY THE GOVERNMENT OF KERALA.

EXHIBIT-P9: TRUE COPY OF THE WORK ORDER DT.18.3.2009 ISSUED BY THE INLAND WATERWAYS AUTHORITY OF INDIA.

EXHIBIT-P10: TRUE COPY OF THE SALE BILL NO.21/2014-15 DT.28.2.2015 ISSUED TO THE DIRECTOR OF PORTS, VALYATHURA.

EXHIBIT-P11: TRUE COPY OF THE RETURN DT.12.3.2015 FOR THE MONTH OF FEBRUARY, 2015.

EXHIBIT-P12: TRUE COPY OF THE STATEMENT OF ACCOUNTING STANDARD (AS7) ISSUED BY THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA.

EXHIBIT-P13: TRUE COPY OF THE WORK ORDER DT.31.3.2009 ISSUED BY THE DIRECTOR OF PORTS, TRIVANDRUM.

EXHIBIT-P14: TRUE COPY OF THE AGREEMENT DT.11.5.2019 BETWEEN THE PETITIONER COMPANY AND THE GOVERNMENT OF KERALA.

EXHIBIT-P15: TRUE COPY OF THE LETTER DT.16.2.2015 ISSUED BY THE PETITIONER.

Msv/

WP(C).No. 31564 of 2015 (U)

EXHIBIT-P16: TRUE COPY OF THE JUDGMENT DT.15.7.2015 IN S.T.(REV) 31, 32 AND 33/2015 PASSED BY THIS HON'BLE COURT.

EXHIBIT-P17: TRUE COPY OF THE AUDIT REPORT IN FORM 13 AND 13A.

EXHIBIT-P18: TRUE COPY OF THE ANNUAL RETURN FOR THE YEARS, 2009-10.

EXHIBIT-P19: TRUE COPY OF THE TRADING, PROFIT AND LOSS ACCOUNT WITH BALANCE SHEET AS ON 31.3.2010.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 31564 of 2015
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Dated this the 20th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P1 and P2 revised assessment orders passed by the 1st respondent under the Kerala Value Added Tax Act and Central Sales Tax Act (hereinafter referred to as the "KVAT Act" and "CST Act") for the assessment year 2009-2010. The challenge in the writ petition against Exts.P1 and P2 orders is essentially that, while passing the said orders, the 1st respondent had not properly adverted to the contentions of the petitioner in the reply to the show cause notice, although there was a specific direction to that effect in Ext.P4 judgment of this Court.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing 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 pursuant to Ext.P4 judgment of this Court, the 1st respondent had afforded the petitioner an opportunity of being heard, when the petitioner had placed all the materials, that were produced in the writ petition that led to Ext.P4 judgment, before the 1st respondent.

Thereafter, the 1st respondent has adverted to the said material and passed Ext.P1 order finalising the assessment against the petitioner. Ext.P2 is the consequential order passed under the CST Act. The case of the petitioner, essentially is that the 1st respondent, while passing Exts.P1 and P2 orders, has not properly appreciated the decisions cited by the petitioner in support of his contentions on merits. On a perusal of Ext.P1 order, I find that the 1st respondent has adverted to the said decisions relied upon by the petitioner, but has taken a stand against the petitioner in the assessment proceedings. I find that against the decision on merits, in Exts.P1 and P2 orders, the petitioner has an effective alternate remedy by way of appeal before the appellate authority under the KVAT Act. In matters involving disputed facts, this Court in proceedings under Article 226 of the Constitution of India, is not suited to adjudicate the case of an assessee. Accordingly, I dismiss the writ petition in its challenge against Exts.P1 and P2 orders and relegate the petitioner to his alternate remedy of filing an appeal against Exts.P1 and P2 orders before the appellate authority under the KVAT/CST Act.

The learned counsel for the petitioner would submit that the period for filing appeal has already expired. Taking note of the said contention as also the contention regarding the financial hardship of the petitioner, I direct that, if the petitioner prefers a duly constituted appeal under the KVAT/CST Act, against Exts.P1and P2 orders before the appellate authority under the said enactments, within a period of three weeks from the date of receipt of a copy of this judgment, then, the appellate authority shall consider the same in accordance with law. To enable the petitioner to pursue his appellate remedy, I stay recovery steps pursuant to Exts.P1 and P2, for a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /21.10.15