IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 31942 of 2015 (P)

PETITIONER(S) :

SHRI. T.M. FIROZE,
PROPRIETOR, M/S.T.M.POULTRY FARM, SEETHAMGOLI,
MARKET ROAD, KASARAGOD.

BY SRI.T.M.SREEDHARAN (SENIOR ADVOCATE)
ADVS. SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENT(S) :
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1. THE ASSISTANT COMMISSIONER (KVAT),
   COMMERCIAL TAXES SPECIAL CIRCLE,
   KASARAGOD - 671 121.

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

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 31942 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS :

P1: TRUE COPY OF THE NOTICE DATED 20.11.2014 ISSUED U/S 25(1) BY THE 1ST RESPONDENT FOR AY - 2010-11.

P2: TRUE COPY OF THE NOTICE DATED 20.11.2014 ISSUED U/S 25(1) BY THE 1ST RESPONDENT FOR AY - 2011-12.

P3: TRUE COPY OF THE REPLY DATED 05.01.2015 GIVEN THE PETITIONER TO THE 1ST RESPONDENT RE-ASSESSMENT NOTICE.

P4: TRUE COPY OF THE JUDGMENT DATED 13.01.2015 IN W.P.(C).NO.1186 OF 2015 OF THIS HON'BLE COURT.

P5: TRUE COPY OF THE NOTICE NO.32130228644/2010-11 TO 2011-12 DATED 18.09.2015 ISSUED BY THE 1ST RESPONDENT.

P6: TRUE COPY OF THE REPLY DATED 29.09.2015 GIVEN BY THE PETITIONER TO THE 1ST RESPONDENT.

P7: TRUE COPY OF THE AUDITED STATEMENT OF ACCOUNTS FOR THE YEAR ENDED 31.03.2011.

P8: TRUE COPY OF THE AUDITED STATEMENT OF ACCOUNTS FOR THE YEAR ENDED 31.03.2012.

P9: TRUE COPY OF THE AUDITED STATEMENT OF ACCOUNTS FOR THE YEAR ENDED 31.03.2013.

P10: TRUE COPY OF THE NOTICE DATED 06.02.2015 ISSUED BY THE 1ST RESPONDENT.

P11: TRUE COPY OF FINAL ASSESSMENT ORDER NO.32130228644/2010-11 DATED 16.10.2015 PASSED BY THE FIRST RESPONDENT FOR THE ASST. YEAR 2010-11 ALONG WITH DEMAND NOTICE.

P12: TRUE COPY OF FINAL ASSESSMENT ORDER NO.32130228644/2011-12 DATED 16.10.2015 PASSED BY THE FIRST RESPONDENT FOR THE ASST. YEAR 2011-12 ALONG WITH DEMAND NOTICE.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.31942 of 2015

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Dated this the 7th day of December, 2015

J U D G M E N T

The petitioner, who approached this Court through the present writ petition, initially challenging Exts.P1 and P2 notices issued to him proposing a best judgment assessment under Section 25 of the Kerala Value Added Tax Act, on the ground that, the said notices were issued without complying with the directions of this Court in Ext.P4 judgment, was subsequently served with Exts.P11 and P12 assessment orders dated 16.10.2015 completing the assessments in relation to the petitioner for the assessment years 2010-2011 and 2011-2012 under the Kerala Value Added Tax Act. The petitioner now impugns Exts.P11 and P12 assessment orders, inter alia, on the ground that, the said assessment orders were passed without complying with the directions of this Court in Ext.P4 judgment.

2. I have heard the learned Senior counsel Sri. T.M.Sreedharan, appearing on behalf of 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, in Ext.P4 judgment of this Court, this Court had directed the assessing authority to ensure that copies of any documents, sought to be relied on by him while finalising the assessment against the petitioner, would be furnished to the petitioner, and further, that the petitioner would also be afforded an opportunity to cross examine such persons whose statements were relied upon by the assessing authority while completing the assessment against the petitioner. It would appear that pursuant to the said judgment, the petitioner approached the assessing authority and sought for a compliance with the directions in Ext.P4 judgment. The assessing authority, however, took note of the fact that, over and above the documents that were relied upon against the petitioner, the petitioner had also sought for cross examination of certain other persons, which the assessing authority found unnecessary for the purposes of completing the assessment against the petitioner. It was also found that the petitioner had compounded the penalty proceedings initiated against him by admitting to the fact of suppression in respect of 38 invoices, and the assessing authority took note of the said admission of suppression in respect of those invoices and extrapolated the same to the remaining invoices that were found to have been issued by the petitioner. It is on the said basis that Exts.P11 and P12 assessments have been completed against the petitioner on best judgment basis, by estimating the suppressed turnover in the assessment proceedings. Although learned Senior counsel would vehemently contend that in estimating the turnover of the petitioner, the assessing authority has acted on material that was not shown to the petitioner, I am of the view that in the instant case on account of the fact that the petitioner had admitted to suppression in the penalty proceedings, the assessing authority was justified in estimating the suppressed turnover based on the admission in the penalty proceedings. At any rate, if the petitioner is aggrieved by the quantum of suppression that was detected in the case of the petitioner, and the estimation of turnover done on that basis, the petitioner has an effective alternate remedy by way of filing an appeal before the appellate authority under the Kerala Value Added Tax Act. I am of the view that, complicated issues of fact involving the manner of estimating suppressed turnover cannot be gone into in these proceedings under Article 226 of the Constitution of India. Resultantly, I dispose the writ petition by relegating the petitioner his alternate remedy of filing appeals against Exts.P11 and P12 assessments orders before the appellate authority under the Kerala Value Added tax Act.

The learned Senior counsel would submit that the period for filing an appeal against Exts.P11 and P12 has nearly expired. Taking note of the said submission of the learned Senior counsel, I direct that recovery steps for recovery of amounts confirmed against the petitioner by Exts.P11 and P12 assessment orders shall be kept in abeyance for a period of three weeks so as to enable the petitioner to pursue his appellate remedy against Exts.P11 and P12 orders of the 1st respondent.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/07.12.15