IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 32345 of 2014 (P)
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PETITIONER :
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M/S.KURLON ENTERPRISES LIMITED,
(FORMERLY M/S. KURLON LIMITED), M.G.ROAD,
ERNAKULAM REPRESENTED BY SIJITH PADMANABHAN,
(BRANCH ACCOUNTANT - AUTHORISED SIGNATORY)

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS :
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1. THE ASST. COMMISSIONER,
COMMERCIAL TAXES, SPECIAL CIRCLE - II
ERNAKULAM - 682 015.

2. STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SRI. SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 32345 of 2014 (P)
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## APPENDIX

PETITIONER(S)' EXHIBITS
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P1: COPY OF NOTICE ISSUED UNDER SECTION 25(1) TO THE VAT ACT.

P2: COPY OF REPLY FILED BY THE PETITIONER.

P3: COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.

P4: COPY OF REPLY FILED BY THE PETITIONER.

P5: COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT.

P6: COPY OF JUDGMENT OF IN OTR NO. 9/2012 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS : NIL.
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//TRUE COPY//

P.A. TO JUDGE

bp

**A.K.JAYASANKARAN NAMBIAR, J.**

**..............................................**

**W.P.(C) No.32345 of 2014 (P)**

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Dated this the 23rd day of February, 2015

**JUDGMENT**

The challenge in the writ petition is against Ext.P5 order of assessment passed by the 1st respondent under the Kerala Value Added Tax Act, 2003, in respect of the petitioner for the assessment year 2013 - 2014.

2. The facts would disclose that, while the petitioner has filed an annual return for the year 2013 - 2014, he had not filed the audit statements in Form 13 and 13(a), since he had time till 31.12.2014 for filing the same as per the provisions of the Statute. It is also pointed out that, subsequently by way of a circular, the time limit for filing this statement was extended up to 31.01.2015. The 1st respondent, however, by Ext.P1 notice dated 16.07.2014 proposed to finalise the assessment in terms of Section 25(1) of the KVAT Act. The petitioner pointed out through Ext.P2 reply to the said notice that, the matter should be kept pending till the petitioner submits the statement of audit in Form 13 and 13(a) for the year in question, as contemplated under the Statute. It would appear that, the 1st respondent did not wait for the said period to expire and proceeded to pass Ext.P5 assessment order confirming an exorbitant demand on the petitioner. Ext.P5 is impugned in the writ petition, inter alia on

the ground that, it has been passed under haste and without waiting for the petitioner to comply with the statutory formalities to support the return filed by him.

3. I have heard Sri.Harisankar V. Menon, learned counsel appearing for the petitioner and Sri.Sudheesh Kumar, learned Government Pleader appearing for the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that in Ext.P5 order, the 1st respondent has completed the assessment of the petitioner for the assessment year in question, in a haste and without waiting for the petitioner to comply with the requirement of filing audit statements as required under the KVAT Act. It is not in dispute that, the period for filing the audit statement in Form 13 and 13(a) had not expired by the time the notice under Section 25(1) of the KVAT Act was issued to the petitioner, or at the time when Ext.P5 order was passed confirming the proposals in Ext.P1 notice. The 1st respondent would rely on the provisions of Section 22(9) of the KVAT Act to hold that the petitioner could not be permitted to revise the return already filed by him on the basis of the audit statements. In my view, this interpretation of Section 22(9) of the 1st respondent is legally flawed. Section 22 (9) makes it clear that, it is only when an offence has been

detected under the Act, in respect of the return filed by a dealer or otherwise, and proceedings initiated under the Act, that the dealer will not be permitted to revise the return till such proceedings are finalised. The said provision has no application in a case such as the present, where no proceedings have been initiated against the petitioner in connection with an offence that was detected. Thus, I find that, Ext.P5 is legally unsustainable. Accordingly, I quash Ext.P5 and direct the 1st respondent to pass fresh orders completing the assessment of the petitioner for the assessment year 2013 - 2014, after taking into account the audit statements filed by the petitioner in Form 13 and 13(a), and after affording the petitioner an opportunity, of revising the return, if required, on the basis of the said statements. The 1st respondent shall pass fresh orders, as directed, after hearing the petitioner, within a period of two months from the date of receipt of a copy of this judgment. To enable the 1st respondent to do this, the petitioner shall appear before the 1st respondent at 11 a.m. on 05.03.2015.

sd/-
**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

AMV/23/02/