IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

W.P.(C).No.32183 of 2015 (W)

PETITIONER(S):-

M/S. N.J.BUSINESS CORPORATION,
STONE HOUSE, MARKET ROAD, ALUVA,
ERNAKULAM-683 101, REPRESENTED BY ITS PARTNER
MR.ALTHAAF JEHANGIR.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.RAJA KANNAN.

RESPONDENT(S):-

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1. STATE OF KERALA,
REPRESENTED BY IT SECRETARY TO GOVERNEMNT
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. THE COMMERCIAL TAX OFFICER-IV,
COMMERCIAL TAX OFFICER-IV, COMMERCIAL TAXES, ALUVA-683 101.

3. THE ASSISTANT COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ALUVA-683 101.

4. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERRY-682 002.

5. TRINETRA SUPER RETAILS PRIVATE LIMITED,
NOW KNOWN AS ADITYA BIRLA RETAIL LIMITED,
5/149/B, ALAYKKAPARAMBU, NH BYEPASS, THURAVOOR P.O.,
ALAPPUZHA-683 532.

R1 TO R4 BY SPECIAL GOVERNMENT PLEADER SRI.S.SUDHEESHKUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.32183 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1. TRUE COPY OF THE NOTICE DATED 25/10/2014 ISSUED BY THE 2ND RESPONDENT U/S.67(1) OF THE KVATACT FOR THE YEAR 2012-13.

EXT.P2. TRUE COPY OF THE E-MAIL SEND BY THE OFFICAL OF THE 5TH RESPONDENT TO THEIR ASSESSING AUTHORITY, REQUESTING REVISION OF RETURNS DATED 18/10/2013.

EXT.P3. TRUE COPY OF THE LETTER DATED 28/2/2015 SUBMITTED BY THE 5TH RESPONDENT TO THE 2ND RESPONDENT.

EXT.P4. TRUE COPY OF THE LETTER DATED 28/2/2015 SEND BY THE 5TH RESPONDENT TO THE PETITIONER.

EXT.P5. TRUE COPY OF THE ORDER DATED 16/12/2014 ISSUED BY THE 2ND RESPONDENT CONFIRMING OF RS.73,36,694/- U/S.67(1) OF THE KVATACT, FOR THE YEAR 2012-13.

EXT.P6. TRUE COPY OF THE APPEAL MEMORANDUM (WITHOUT ANNEXURES) DATED 3/3/2015 FILED BY THE PETITIOENR BEFORE THE 3RD RESPONDENT AGAINST EXT.P5 ORDER.

EXT.7. TRUE COPY OF THE STAY PETITION DATED 3/3/2015 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT AGAINST EXT.P5 ORDER.

EXT.P8. TRUE COPY OF THE CONDITIONAL STAY ORDER DATED 7/8/2015 ISSUED BY THE 4TH RESPONDENT IN RP 28/15-16 FILED BY THE PETITIONER.

RESPONDENT(S)' EXHIBITS:-
-- NIL.

Vku/- [true copy]

K. Vinod Chandran, J

W.P.(C).No.32183 of 2015-W

Dated this the 21st day of October, 2015

<u>JUDGMENT</u>

The petitioner is aggrieved with the fact that the petitioner has been mulcted with a liability, which, he alleges, in fact, was based on a transaction which he had not conducted. The petitioner admittedly was a dealer in products of M/s.Hindustan Unilever Limited. The petitioner is said to have discontinued the business in the year 2011. However, based on the returns filed by the 5th respondent, penalty proceedings were initiated against the petitioner.

2. The 5th respondent, another dealer under the Kerala Value Added Tax Act, 2003 [for brevity "the Act"], had shown certain sale transactions having been made by the petitioner to the 5th respondent, which is clearly quoting the TIN number of the petitioner, in the returns filed. The petitioner contends that the petitioner had not, in fact, carried on such transaction and relies on Exhibit P4 letter issued by the 5th respoondent, wherein it is stated that the same was a mistake.

3. However, it is to be specifically noticed that even in Exhibit P4, there is no disclosure as to from whom the 5th respondent received the supplies. The communications between dealers need not be looked into by the authorities and it was incumbent upon the petitioner to have specifically brought such facts to the notice of the authorities, especially since they claim to have received a communication from the 5th respondent as to who supplied such goods to the 5th respondent. Nothing is disclosed before the first appellate authority also, as is indicated in Exhibit P8. The first appellate authority, in any event, only made a conditional order of deposit of 30% of the amount demanded and to furnish adequate security for the remaining amount to the satisfaction of the assessing authority. In such circumstance, this Court is not inclined to interfere with Exhibit P8 order passed, since nothing has been placed on record except the assertion made by the 5th respondent in Exhibit P4 that the supplies were made by another dealer, who still remains incognito. The transaction is of the year 2012-13 and even while considering the interim prayer in the revision, the authority finds that the other dealer has not done anything to revise its returns.

The writ petition, hence, is found to be devoid of merit and the same is dismissed, leaving the issues to be considered in revision, untrammelled by any observations herein.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]