IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 32350 of 2015 (P)

PETITIONER :

ULTRA TILES PRIVATE LTD., AGED 34 YEARS,
VI/3636, VADACKAL ESTATE, KUTTIKATTUKARA
UDYOGAMANDAL, ERNAKULAM DISTRICT, PIN-682036
REPRESENTED BY ITS FACTORY IN-CHARGE, D.SARAVANAN.

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS :
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1. **THE ASSISTANT COMMISSIONER,**
   SPECIAL CIRCLE, MATTANCHERRY AT ALUVA,
   DEPARTMENT OF COMMERCIAL TAXES, ALUVA, PIN-682301.

2. **THE INTELLIGENCE OFFICER,**
   DEPARTMENT OF COMMERCIAL TAXES,
   INTELLIGENCE SQUAD NO.2, MATTANCHERRY
   AT KARUKUTTY PIN-683576.

BY GOVERNMENT PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 32350 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT UNDER SEC.67(1)DATED 08.07.2015.

P2: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 16.07.2015.

P3: TRUE COPY OF THE RETURN FILED BY THE PETITIONER FOR THE MONTH OF APRIL 2015,ITS ACKNOWLEDGMENT AND THE E-CHALAN FOR PAYMENT OF TAX,DT.11.07.2015.

P4: TRUE COPY OF THE RETURN FILED BY THE PETITIONER FOR THE MONTH OF MAY 2015,ITS ACKNOWLEDGMENT AND THE E-CHALAN FOR PAYMENT OF TAX,DT.16.07.2015.

P5: TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT UNDER SEC.67(1),DATED 08.09.2015.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32350 OF 2015 (P)

Dated this the 17th day of November, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 order of penalty imposed on the petitioner by the 2nd respondent under Section 67 of the Kerala Value Added Tax Act. The grievance of the petitioner against Ext.P5 order is essentially that while he was served with a notice proposing the imposition of a penalty on him under Section 67 of the KVAT Act, he had replied to the same by pointing out that the entire sales tax due to the Department was subsequently paid along with the monthly return for the month of April, 2015 and May, 2015. It is submitted that it is notwithstanding the fact of intimation of the payment of the entire amount of sales tax that was due, together with interest thereon, that the 2nd respondent chose to reject the submissions of the petitioner and impose the maximum penalty for the alleged offence.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find from Ext.P5 order that the 2nd respondent does not enter into any specific finding as regards the mens rea possessed by the petitioner on the basis of which the petitioner was liable to be imposed the maximum penalty under Section 67 of the KVAT Act. This is more so, because, it is not in dispute that on receipt of the notice proposing penalty, the petitioner had realized the omission in payment of tax and the entire amount of sales tax due was paid along with the monthly return for the month of April, 2015 and May, 2015 together with the interest amounts due on the said payments. In my view, when the petitioner had taken steps to remit the entire amounts of tax defaulted immediately on receipt of the notice and had informed the 2nd respondent of the said fact at the time of consideration of the objections to the proposal of penalty, the 2nd respondent ought not have imposed the maximum penalty on the petitioner. I therefore quash Ext.P5 order of the 2nd respondent, and direct him to reconsider the matter of imposition of penalty on the petitioner by taking note of the observations in this judgment. The 2nd 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.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/17/11/15