IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 32561 of 2015 (U)

PETITIONER(S):

M/S.SPECTRA TECHNOLOGIES, 41/1843 C-1,
KATTIKKARAN APARTMENTS, KATTIKKARAN ROAD,
COCHIN-682 018, REPRESENTED BY ITS
MANAGING PARTNER, SRI.PRADEEP KUMAR.

BY ADV. SRI.TOMSON T.EMMANUEL.

RESPONDENT(S):
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1. **INTELLIGENCE OFFICER, SQUAD NO.VIII,**
   COMMERCIAL TAXES, THEVARA,
   ERNAKULAM, COCHIN-682 015.

2. **COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAXES, 1ST CIRCLE,
   KALAMASSERY AT KAKKANAD, COCHIN-682 030.

3. **DEPUTY TAHSILDAR (HEAD QUARTERS),**
   KOKKOTHAMANGALAM TALUK, CHERTHALA-688 524.

4. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO TAXES DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM-695 001.

BY GOVT. PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 32561 of 2015 (U)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 COPY OF THE CERTIFICATE OF REGISTRATION UNDER THE KERALA GENERAL SALES TAX ACT ISSUED TO PETITIONER FIRM BY 2ND RESPONDENT.

EXT.P2 COPY OF THE ASSESSMENT ORDER DATED 01/08/2007 COMPLETED BY FAST TRACK TEM U/S. 17D OF THE KGST ACT FOR THE YEAR 2001-02.

EXT.P2A COPY OF THE ASSESSMENT ORDER DATED 01/08/2007 COMPLETED BY FAST TRACK TEM U/S.17D OF THE KGST ACT FOR THE YEAR 2002-03.

EXT.P3 COPY OF THE REQUEST DATED 12/03/2015 MADE BEFORE 2ND RESPONDENT, BY MANAGING PARTNER OF THE PETITIONER FIRM, FOR ISSUANCE OF CERTIFIED COPY OF ORDERS, DUE AS ARREARS.

EXT.P4 COPY OF THE EX-PARTY PENALTY PROCEEDING DATED 31/03/2009 U/S.45A OF THE KGST ACT IMPOSED ON PETITIONER FIRM BY 1ST RESPONDENT FOR 2001-02, WITHOUT VERIFYING ASSESSMENT RECORDS OF 2ND RESPONDENT.

EXT.P4A COPY OF THE EX-PARTY PENALTY PROCEEDING DATED 31/03/2009 U/S. 45A OF THE KGST ACT IMPOSED ON PETITIONER FIRM BY 1ST RESPONDENT FOR 2002-03, WITHOUT VERIFYING ASSESSMENT RECORDS OF 2ND RESPONDENT.

EXT.P4B COPY OF THE EX-PARTY PENALTY PROCEEDING DATED 31/03/2009 U/S. 45A OF THE KGST ACT IMPOSED ON PETITIONER FIRM BY 1ST RESPONDENT FOR 2003-04, WITHOUT VERIFYING ASSESSMENT RECORDS OF 2ND RESPONDENT.

EXT.P5 COPY OF THE REVISED EX-PARTY ASSESSMENT ORDER DATED 13/06/2011, COMPLETED BY 2ND RESPONDENT ON THE BASIS OF EXT.P4 PENALTY FOR THE YEAR 2001-02 U/S.17(3) OF THE KGST ACT.

EXT.P5A COPY OF THE REVISED EX-PARTY ASSESSMENT ORDER DATED 13/06/2011, COMPLETED BY 2ND RESPONDENT ON THE BASIS OF EXT.P4(A) PENALTY FOR THE YEAR 2002-03 U/S. 17(3) OF THE KGST ACT.

EXT.P5B COPY OF THE REVISED EX-PARTY ASSESSMENT ORDER DATED 13/06/2011, COMPLETED BY 2ND RESPONDENT ON THE BASIS OF EXT.P4B PENALTY FOR THE YEAR 2003-04 U/S. 17(3) OF THE KGST ACT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

rs. P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32561 OF 2015 (U)

Dated this the 27th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P4 to P4(b) penalty orders and Exts.P5 to P5(b) assessment orders passed under the Kerala General Sales Tax Act, hereinafter referred to as the 'KGST Act'. The grievance of the petitioner in the writ petition is essentially that the petitioner was not aware of the passing of the said orders and it is only recently, when the recovery proceedings were initiated against the petitioner, that he came to know of the passing of the aforementioned orders. Counsel for the petitioner submits that immediately on coming to know of the orders, the petitioner approached the respondents for obtaining certified copies of the orders and the said orders were served on him. It is under these circumstances that the petitioner challenges the orders through this present writ petition inter alia on the ground that the orders were passed without hearing him and also that the orders are vitiated even on merits.

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 note that the orders impugned in the writ petition were passed in 2011. Although it is the case of the petitioner that the unit of the petitioner was closed since 2003, and therefore he was not aware of the said orders, I am of the view that since there are factual aspects involved in the matter, this Court may not be suited to examine the legality or correctness of the orders impugned in the writ petition. Accordingly, I dismiss the writ petition, in its challenge against Exts.P4 to P4(b) penalty orders and Exts.P5 to P5(b) assessment orders and relegate the petitioner to his alternate remedy under the KGST Act against the said orders.

Counsel for the petitioner would submit that he would require some time to avail his alternate remedy under the KGST Act against the aforementioned orders. To enable the petitioner to pursue his alternate remedies under the KGST Act against the orders impugned in the writ petition, I direct that recovery steps initiated against the petitioner for recovery of amounts confirmed against the petitioner by the orders impugned in this writ petition shall be kept in abeyance for a period of one month from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/27/10/15