IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 32945 of 2015 (P)

PETITIONER :

MAS MAKE POLYMERS,
VELLALACHIPOTTA, ELAPULLI, EDUPPUKULAM.P.O.,
PALAKKAD, REPRESENTED BY PROPRIETOR,
K.P.ABDUL SALAM.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENT(S):
----

1. INTELLIGENCE OFFICER (I.B),
COMMERCIAL TAXES, CIVIL STATION ANNEXE,
ALAPPUZHA-678 001

2. THE AUTHORITY FOR CLARIFICATION U/S. 94 OF THE
KERALA VALUE ADDED TAX ACT REPRESENTED BY THE JOINT
COMMISSIONER (GENERAL), OFFICE OF THE COMMISSIONER OF
COMMERCIAL TAXES, TAX TOWERS, KARAMANA,
THIRUVANANTHAPURAM-695 002

BY GOVERNMENT PLEADER SMT. LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

WP(C).NO.32945/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ANNUAL RETURN FOR 2013-14

P1(A) COPY OF THE ANNUAL RETURN FOR 2014-15

P2 COPY OF THE NOTICE DATED 22/09/2015 ISSUED BY THE 1ST RESPONDENT U/S. 67 FOR THE YEAR 2013-14

P2(A) COPY OF THE NOTICE DATED 22/09/2015 ISSUED BY THE 1ST RESPONDENT U/S. 67 FOR THE YEAR 2014-15

P3 COPY OF THE APPLICATION DATED 6/10/2015 FILED BEFORE THE 2ND RESPONDENT U/S. 94

P4 COPY OF THE LETTER DATED 13/10/2015 FILED BEFORE THE 1ST RESPONDENT FOR THE YEAR 2013-14

P4(A) COPY OF THE ACKNOWLEDGMENT DATED 14/10/2015

P5 COPY OF THE JUDGMENT DATED 20/10/2015 OF THIS HON'BLE COURT IN WP (C).NO.31994/2015

P6 COPY OF THE ORDER DATED 19/10/2015 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2013-14

P6(A) COPY OF THE ORDER DATED 19/10/2015 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2014-15

P7 COPY OF THE JUDGMENT DATED 16/06/2014 IN WP(C).NO.11696/2013.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32945 OF 2015 (P)

Dated this the 29th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P6 and P6(a) orders that are passed by the 1st respondent imposing penalties on the petitioner under the Kerala Value Added Tax Act for the assessment years 2013-14 and 2014-15 respectively. The case of the petitioner in the writ petition is that he had approached this Court in anticipation of such action by the 1st respondent, and this Court, by Ext.P5 judgment, had disposed the writ petition making it clear that further proceedings pursuant to the notices proposing penalty shall be kept in abeyance till such time as the Authority for clarification passed orders in the clarification application filed by the petitioner and communicated the same to the petitioner. It is stated that while Ext.P5 judgment was rendered on 20.10.2015, and was brought to the notice of the 1st respondent immediately thereafter, the 1st respondent appears to have passed Exts.P6 and P6(a) orders on 19.10.2015 , although the same were communicated to the petitioner only on 21.10.2015.

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 that by Ext.P5 judgment, I had found that the issue on which the petitioner was being proceeded against for the imposition of penalty was the same as the one in respect of which the petitioner had sought for clarification from the authority for clarification under the KVAT Act, and directed that further steps, pursuant to the notices proposing penalty issued to the petitioner, be kept in abeyance till such time as the authority for clarification passed orders on the clarification petition and communicated the same to the petitioner. Exts.P6 and P6(a) orders appear to have been passed by the 1st respondent without being aware of Ext.P5 judgment of this Court. Under the said circumstances, I am of the view that in the light of the specific directions in Ext.P5 judgment, Exts.P6 and P6(a) cannot be legally sustained. Accordingly, I quash Exts.P6 and P6(a) orders of the 1st respondent and direct that the 1st respondent shall pass orders of penalty, if found to be required,

only after the 2nd respondent has passed orders as directed in Ext.P5 judgment.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/29/10/15