

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 33496 of 2015 (J)

PETITIONER(S):

**M/S.SOUPARNIKA VEMBANAD,
POORNAPRABHA BUILDINGS, OPPO.TALUK HOSPITAL,
THRIPUNITHURA,
REPRESENTED BY ITS MANAGING PARTNER JOSE THOMAS.**

BY ADV. SRI.AJI V.DEV

RESPONDENT(S):

- 1. INTELLIGENCE OFFICER, SQUAD NO.1,
COMMERCIAL TAXES, ERNAKULAM-682 015.**
- 2. THE COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWER, KILLIPPALAM, KARAMANA P.O.,
THIRUVANNATHAPURAM-695 002.**

BY GOVERNMENT PLEADER SMT.LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE JOINT DEVELOPMENT AGREEMENT DATED 27/3/2007**
- P2 : COPY OF THE JUDGMENT DATED 22/12/10 IN WPC.38067/10**
- P2(A) : COPY OF THE JUDGMENT DATED 7/3/11 IN WPC.38067/10 RP.NO.111/11**
- P2(B) : COPY OF THE JUDGMENT DATED 7/3/11 IN WPC.2554/10 RP.NO.112/11**
- P3 : COPY OF THE STOP MEMO ISSUED BY THE VILLAGE OFFICER DATED 14/12/10**
- P4: COPY OF THE RECEIPT ISSUED BY THE RESPONDENT OFFICER DATED 7/2/14 (CONTAINING THREE PAGES)**
- P5: COPY OF THE NOTICE ISSUED FOR THE YEAR 2008-09 DATED 16/6/14 PROPOSING PENALTY**
- P5(A): COPY OF THE NOTICE ISSUED FOR THE YEAR 2009-10 DATED 16/6/14 PROPOSING PENALTY**
- P5(B): COPY OF THE NOTICE ISSUED FOR THE YEAR 2010-11 DATED 16/6/14 PROPOSING PENALTY**
- P5(C): COPY OF THE NOTICE ISSUED FOR THE YEAR 2011-12 DATED 16/6/14 PROPOSING PENALTY**
- P5(D): COPY OF THE NOTICE ISSUED FOR THE YEAR 2012-13 16/6/14 PROPOSING PENALTY**
- P5(E): COPY OF THE NOTICE ISSUED FOR THE YEAR 2013-14 DATED 16/6/14 PROPOSING PENALTY**
- P6: COPY OF THE LETTER FILED BY THE PETITIONER DATED 10/7/15 REQUESTING FURTHER OPPORTUNITY**
- P6(A): COPY OF THE LETTER FILED BY THE PETITIONER DATED 10/7/15 REQUESTING FOR THE ISSUE OF THE PHOTO COPIES OF THE DOCUMENTS**
- P7: COPY OF THE PROCEEDING IMPOSING PENALTY/LEWYING TAX FOR THE YEAR 2008-09 DATED 31/8/15**
- P7(A): COPY OF THE PROCEEDING IMPOSING PENALTY/LEWYING TAX FOR THE YEAR 2009-10 DATED 31/8/15**

PJ

WP(C).No. 33496 of 2015 (J)

**P7(B): COPY OF THE PROCEEDING IMPOSING PENALTY/LEWYING TAX FOR THE
YEAR 2010-11 DATED 31/8/15**

**P7(C): COPY OF THE PROCEEDING IMPOSING PENALTY/LEWYING TAX FOR THE
YEAR 2011-12 DATED 31/8/15**

**P7(D): COPY OF THE PROCEEDING IMPOSING PENALTY/LEWYING TAX FOR THE
YEAR 2012-13 DATED 31/8/15**

**P7(E): COPY OF THE PROCEEDING IMPOSING PENALTY/LEWYING TAX FOR THE
YEAR 2013-14 DATED 31/8/15**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 33496 of 2015

Dated this the 4th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 series of penalty orders that were imposed on the petitioner for the assessment years 2008-09 to 2013-14, under the Kerala Value Added Tax Act. The grievance of the petitioner in the writ petition is essentially that, before passing Ext.P7 series of penalty orders, the petitioner was not given copies of the records that had been seized from his premises, and which formed the basis of the proposals in the penalty notices issued to him. It is the contention of the petitioner that Ext.P7 series of orders are vitiated by a non-compliance with the rules of natural justice.

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

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that records had been seized from the premises of the petitioner as early as on 07.02.2014 and the petitioner had not taken any steps to seek copies of the records seized from him, till the notice proposing a

penalty, was issued to him on 16.06.2015. Even after receipt of the notice dated 16.06.2015, the petitioner did not file any reply objecting to the proposals contained in the said notice, but waited till 10.07.2015, when he is stated to have sent Ext.P6(a) letter to the respondents seeking copies of the documents that had been seized in February, 2014. The conduct of the petitioner in this case indicates that he has not been seriously pursuing a request for obtaining copies of the documents that had been seized from his business premises. I therefore, do not find any reason to interfere with Ext.P7 series of penalty orders in these proceedings under Article 226 of the Constitution of India. The Writ petition in its challenge against the said order, therefore, fails and is accordingly, dismissed. The petitioner is relegated to his alternate remedy of filing revision petitions against the said orders, before the revision authority under the KVAT Act.

The learned counsel for the petitioner would submit that the time for preferring the revision petition against Ext.P7 series of orders has already expired and hence, he would require one month time to approach the revision authority. Taking note of the said submission, I direct that recovery steps for recovery of amounts

confirmed against the petitioner by Ext.P7 series of orders shall be kept in abeyance for a period of one month, so as to enable the petitioner to approach the revision authority, against Ext.P7 series of orders. I also direct the 1st respondent to permit the petitioner to take copies of the documents seized from his premises, in the meanwhile, if the petitioner should approach him with such a request.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE