IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 33774 of 2014 (V)

PETITIONER :

RANGE ENTERPRISES,
T.C.11/1616(1), "SHARON", PLAMOODU-CHARACHIRA ROAD,
THIRUVANANTHAPURAM-695 003,
REPRESENTED BY ITS PROPRIETOR.

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

RESPONDENT(S):
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1. INTELLIGENCE OFFICER,
   SQUAD NO.III, COMMERCIAL TAXES,
   THIRUVANANTHAPURAM AT NEYYATTINKARA, PIN-695 004.

2. COMMERCIAL TAX OFFICER,
   FIRST CIRCLE, TAX TOWERS, KARAMANA,
   THIRUVANANTHAPURAM-695 002.

R1 & R2 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 33774 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: COPY OF ONE OF SUCH AGREEMENTS DATED 26.9.2013.

P2: COPY OF THE INVOICE ISSUED BY THE FOREIGN SELLER IN THE NAME OF THE PETITIONER.

P3: COPY OF THE AIR WAY BILL DATED 26.09.2013.

P4: COPY OF THE BILL OF ENTRY DATED 9.10.2013.

P5: COPY OF THE SIR DATED 30.1.2014.

P6: COPY OF THE NOTICE DATED 8.7.2014 ISSUED BY THE 1ST RESPONDENT.

P6(A): COPY OF THE NOTICE DATED 8.7.2014 ISSUED BY THE 1ST RESPONDENT.

P7: COPY OF THE LETTER DATED 4.8.2014 ADDRESSED TO THE 1ST RESPONDENT.

P8: COPY OF THE REPLY DATED 14.8.2014 FILED BY THE PETITIONER.

P8(A): COPY OF THE REPLY DATED 14.8.2014 FILED BY THE PETITIONER.

P9: COPY OF THE ORDER DATED 30.09.2014 ISSUED BY THE RESPONDENT.

P9(A): COPY OF THE ORDER DATED 30.09.2014 ISSUED BY THE RESPONDENT.

P10: COPY OF THE JUDGMENT DATED 16.06.2014 OF THIS HON'BLE COURT IN WPC.NO.11696/2013.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.33774 OF 2014 (V)

Dated this the 10th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P9 and P9(a) orders that are passed by the 1st respondent imposing a penalty on the petitioner for the assessment years 2012-13 and 2013-14 under the Kerala Value Added Tax Act. The main contention of the petitioner in his challenge against Exts.P9 and P9(a) orders is that, he was not afforded an opportunity of hearing before passing of the said orders. He also impugns the said orders on the ground that, the legal issue as to whether penalty can be imposed in the circumstances that obtained against the petitioner, has already been decided in favour of the assessee by a host of cases of the Supreme Court as also of the High Court. It is his contention that in Exts.P9 and P9(a) orders, the 1st respondent has not considered the impact of the said judgments and mechanically proceeded to impose penalty on the petitioner.

2. I have heard the learned counsel 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 as also the submissions made across the bar, I find that pursuant to notices proposing the imposition of penalty, that were served on the petitioner, the petitioner had sought time to file a reply to the said notices. In the letter communicating the extension of time for filing the reply, that was issued to the petitioner, it was clearly indicated that the time for filing the reply, and for hearing of the case was extended till 18.8.2014. The said letter, which is produced by the Government Pleader at the time of hearing, is seen acknowledged by the petitioner. It is apparent, therefore, that the petitioner was aware of the posting of the case for hearing on 18.8.2014, and as a matter of fact, in response to the said communication, the petitioner had also submitted his reply on 14.8.2014. He did not, however, appear for hearing on 18.8.2014. The 1st respondent, therefore, proceeded to pass Exts.P9 and P9(a) orders confirming the penalty on the petitioner by considering his reply to the notice proposing penalty. Under these circumstances, I am of the view that Exts.P9 and P9(a) orders are not vitiated by a non-compliance with the rules of natural justice. That apart, I am of the view that the petitioner has an effective alternate remedy against Exts.P9 and P9(a) orders of penalty by way of filing

revision petitions in accordance with the KVAT Act. Thus, without pronouncing on the merits of Exts.P9 and P9(a) orders, I relegate the petitioner to his alternate remedy by filing a revision petition against Exts.P9 and P9(a) orders before the revisional authorities under the KVAT Act. The writ petition, in its challenge against Exts.P9 and P9 (a) orders, is dismissed.

Counsel for the petitioner would submit that he would require a breathing time to approach the revisional authorities against Exts.P9 and P9(a) orders. Taking into account the said submission of counsel for the petitioner, I direct that recovery steps, for recovery of amounts confirmed against the petitioner by Exts.P9 and P9(a) orders, shall be kept in abeyance for a period of two weeks so as to enable the petitioner to approach the revisional authorities as directed above. I make it clear that the stay granted above shall cease to be in force on the expiry of the period of two weeks.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp