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. 33883 of 2015 (I)

PETITIONER:

M. RAFEEKMON, PROPRIETOR,
MAHARAJA JEWELLERY, IX/248,
ERAMALLORE, ALAPPUZHA - 688 537.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   AIT & COMMERCIAL TAX OFFICE,
   KUTHIATHODE - 688 533.

2. **THE INTELLIGENCE OFFICER(IB),**
   COMMERCIAL TAXES, CIVIL STATION ANNEX,
   ALAPPUZHA - 688 001.

BY GOVERNMENT PLEADER SRI.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 33883 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1: **TRUE COPY OF THE CERTIFICATE OR REGISTRATION DATED 04-04-11 ISSUED BY 1ST RESPONDENT TO PETITIONER.**

P2: **TRUE COPY OF THE PROCEDINGS OF OF 1ST RESPONDENT PERMITTING TO COMPOUND TAX U/S.8 DATED 07-10-2014 ISSUED TO PETITIONER.**

P3: **TRUE COPY OF PERMISSION DATED 20-10-2014 ISSUED BY 1ST RESPONDENT TO PETITIONER TO PAY TAX UNDER COMPOUNDING SCHEME U/S. 8 OF THE KVAT ACT.**

P4 : **TRUE COPY OF THE ANNUAL RETURN FILED ON 30-08-2014 FOR THE YEAR 2013-14 BEFORE THE 1ST RESPONDENT.**

P5 : **TRUE COPY OF SUCH PENALTY PROPOSAL NOTICE DATED 11-02-15 ISSUED U/S. 67(1) OF THE KVAT ACT BY 2ND RESPONDENT TO THE PETITIONER.**

P6 : **TRUE COPY OF CHALLAN OF PAYMENT OF COMPOUNDING FEE & TAX DATED 12-02-2015.**

P7 : **TRUE COPY OF THE ANNUAL RETURN DATED 05-07-15 FILED FOR THE YEAR 2014-15 BY PETITIONER BEFORE 1ST RESPONDENT.**

P8 : **TRUE COPY OF REJECTION ORDER OF APPLICATION FOR COMPOUNDING SCHEME DATED 31-08-15 ISSUED BY 1ST RESPONDENT TO THE PETITIONER FOR THE YEAR 2014-15.**

P9 : **TRUE COPY OF THE ASSESSMENT ORDER DATED 23-09-15 FOR THE YEAR 2014-15 ISSUED U/S. 25(1) OF THE KAVAT ACT BY 1ST RESPONDENT TO THE PETITIONER.**

P10: **TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.25086 OF 2015 DATED 08-09-2015.**

RESPONDENT(S)' EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 33883 of 2015

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Dated this the 17th day of November 2015

JUDGMENT

The challenge in the writ petition is against Exts.P8 and P9 orders, that were passed by the 1st respondent, cancelling a permission granted to the petitioner for paying tax on compounded basis and further completing an assessment on best judgment basis on the petitioner in accordance with Section 25(1) of the KVAT Act. The grievance of the petitioner in its challenge against both Exts.P8 and P9 orders is that, while passing the said orders, the 1st respondent did not afford the petitioner a reasonable opportunity of being heard and the orders were passed without considering any objection of the petitioner.

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 and also the submissions made across the Bar, I find from Exts.P8 and P9 orders, that both the orders were passed after issuing a notice to the petitioner. The said notice granted sufficient

time to the petitioner to respond to the contents of the notice and also posted the matter for a personal hearing, which the petitioner did not avail of. There is no material produced before me to suggest that the petitioner had either filed an objection or sought for an adjournment before the 1st respondent pursuant to the notice that was served on him. Under the said circumstances, I am of the view that the petitioner cannot be heard to contend that he was prejudiced by the passing of Exts.P8 and P9 orders on the last date that was granted for the purposes of receiving the objections, if any, of the petitioner. I see no reason to interfere with Exts.P8 and P9 orders in these proceedings under Article 226 of the Constitution of India. I therefore dismiss the writ petition in its challenge against the said orders.

I make it clear that nothing in this judgment shall prejudice the right of the petitioner to pursue his appellate remedy under the KVAT Act against the said orders. To enable the petitioner to pursue his appellate remedy , I stay further proceedings for recovery of amounts from the petitioner, pursuant to Exts.P8 and P9 orders, for a period of one month.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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