IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 33964 of 2015 (U)

PETITIONER :

K.RAVEENDRAN NAIR,
"SAYANTHANAM", MUTTAMBALAM P.O,
KOTTAYAM.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S):
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1. **INTELLIGENCE OFFICER (IB)-II,**
   DEPARTMENT OF COMMERCIAL TAXES,
   KOLLAM -691 001

2. **DEPUTY COMMISSIONER (APPEALS),**
   DEPARTMENT OF COMMERCIAL TAXES, KOLLAM -691 001

3. **DEPUTY COMMISSIONER,**
   DEPARTMENT OF COMMERCIALT AXES,
   COMMERCIAL TAX TOWER,
   ASRAMAM, KOLLAM -691 001

4. **COMMERCIAL TAX OFFICER (WC),**
   DEPARTMENT OF COMMERCIAL TAXES, KOTTAYAM- 686 001

BY GOVERNMENT PLEADER SMT. LILLY.K.T.

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

sts

WP(C).No. 33964 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1	**COPY OF AGREEMENT ENTERED INTO WITH THE AWARDER DATED 22/09/2010**
EXT.P2	**COPY OF INVOICE NO.371 OF M/S. KUDAKKADA PLYWOODS KOLLAM DATED 15/09/2011**
EXT.P2(A)	**COPY OF INVOICE NO.1689 OF M/S. PULLATHIL STEEL AGENCIES, ADICHIRA DATED 22/09/2011**
EXT.P2(B)	**COPY OF INVOICE OF M/S. THOTTATHIL AGENCIES, KOLLAM DATED 27/09/2011**
EXT.P2(C)	**COPY OF INVOICE NO. C-16887 OF M/S. LIGHT HOUSE, KOTTAYAM DATED 26/09/2011**
EXT.P3	**COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DATED 25/10/2013**
EXT.P3(A)	**COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DATED 25/10/2013**
EXT.P4	**COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 18/02/2014**
EXT.P4(A)	**COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 18/02/2014**
EXT.P5	**COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 19/02/2014**
EXT.P6	**COPY OF JUDGMENT IN W.P(C) NO.7630/2014 OF THIS HON'BLE COURT DATED 18/03/2014**
EXT.P7	**COPY OF NOTICE ISSUED BY THE 4TH RESPONDENT DATED 26/10/2015**
EXT.P7(A)	**COPY OF NOTICE ISSUED BY THE 4TH RESPONDENT DATED 26/10/2015**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

sts **P.A.TO JUDGE**

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 33964 of 2015

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Dated this the 11th day of November 2015

JUDGMENT

The challenge in the writ petition is against Exts.P7 and P7(a) pre-assessment notices that have been issued to the petitioner for the assessment years 2010-11 and 2011-12, under the KVAT Act. The grievance of the petitioner in the writ petition is essentially that in Exts.P7 and P7(a) notices, the Assessing Officer has made a reference to penalty proceedings that were concluded against the petitioner during the said years, and the tenor in the notice indicates that it is only on account of those penalty proceedings that the proposals in the notices are sought to be pursued. The prayer of the petitioner in the writ petition is for a deferment of the proceedings pursuant to Exts.P7 and P7(a), till such time as the revision petitions filed by the petitioner against the penalty orders have been decided by the revisional authority.

2. I have heard the learned counsel for the petitioner and 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 the challenge in the writ petition is against Exts.P7 and P7(a) pre-assessment notices. Inasmuch as Exts.P7 and P7(a) are only pre-assessment notices, this Court will ordinarily be reluctant to interfere with the same in proceedings under the Article 226 of the Constitution of India. I do find force, however, in the contention of the petitioner that the assessing authority is proposing to complete the assessment only on the basis of the penalty proceedings that have been concluded against the petitioner. Taking note of the said submission, and while refusing to interdict the further proceedings pursuant to Ext.P7 and P7(a) notices in these proceedings, I make it clear that the 4th respondent assessing officer shall, while completing the assessment proceedings against the petitioner, give independent reasons to support the assessment order to be passed by him, and he shall not rely solely on the penalty proceedings, that are mentioned in the pre-assessment notices issued to the petitioner, for the purpose of completing the assessment in relation to the petitioner. The 4th respondent shall also afford the petitioner two weeks time from today, to file detailed objections to the pre-assessment notices. The assessment shall thereafter be completed only after affording the petitioner an opportunity of being heard .

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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