IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 34153 of 2015 (T)

PETITIONER(S):

U.M IBRAHIM,
IDEAL HOLLOW BRICKS, VPC /106 A, SOUTH EZHIPURAM
SOUTH VAZHAKULAM-683 105, 9388177089.

BY ADV. SRI.AJI V.DEV

RESPONDENT(S):
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1. **COMMERCIAL TAX OFFICER,**
   1ST CIRCLE, PERUMBAVOOR-633 542.

2. **INSPECTING ASST. COMMISSIONER,**
   COMMERCIAL TAXES, MUVATTUPUZHA-686 661.

   BY GOVERNMENT PLEADER SRI.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

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APPENDIX

PETITIONER(S)' EXHIBITS

P1 : A TRUE COPY OF THE PERMISSION GRANTED IN FORM 1E FOR THE YEAR 2014-15 DT 1-10-2014.

P2 : A TRUE COPY OF THE ANNUAL RETURN FILED FOR THE YEAR 2014-15 DT 4-10-2015.

P3 : A TRUE COPY OF THE APPLICATION FOR COMPOUNDING FILED FOR THE YEAR 2015-16 DT 10-6-2015.

P4 : A TRUE COPY OF THE ORDER GRANTING PERMISSION U/S 8(B) DT 4-8-2015.

P4(A) : A TRUE COPY OF THE PERMISSION GRANTED IN FORM 13 FOR THE YEAR 2015-16 DT 28-9-2015

P5 : A TRUE COPY OF THE CONSENT LETTER ISSUED BY THE KSPC BOARD FOR 2015-16 DT 29-9-2015.

P6 : A TRUE COPY OF THE RECTIFICATION PETITION FILED BY THE PETITIONER DT 20-8-2015.

P7 : A TRUE COPY OF THE DEMAND NOTICE ISSUED FOR APRIL/2015 DT 20-9-2015.

P7(A) : A TRUE COPY OF THE DEMAND NOTICE ISSUED FOR MAY/2015 DT 20-9-2015.

P7(B) : A TRUE COPY OF THE DEMAND NOTICE ISSUED FOR JUNE/2015 DT 8-10-2015.

P7(C): A TRUE COPY OF THE DEMAND NOTICE ISSUED FOR JULY/2015 DATED 20/9/15

P7(D): A TRUE COPY OF THE DEMAND NOTICE ISSUED FOR AUGUST/2015 DATED 20/9/15

P8: A TRUE COPY OF THE PROCEEDINGS IMPOSING PENALTY FOR APRIL/2015/DATED 8/10/15

P8(A): A TRUE COPY OF THE PROCEEDINGS IMPOSING PENALTY FOR MAY/2015/DATED 8/10/15

P8(C): A TRUE COPY OF THE PROCEEDINGS IMPOSING PENALTY FOR JUNE/2015/DATED 8/10/15

P8(D): A TRUE COPY OF THE PROCEEDINGS IMPOSING PENALTY FOR AUGUST/2015/DATED 8/10/15

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P9: A TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER DATED 19/10/15.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 34153 of 2015

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Dated this the 12th day of November 2015

JUDGMENT

The challenge in the writ petition is against Exts.P7 and P8 series of assessment orders/penalty orders that have been passed in relation to the petitioner for the period from April, 2015 to August, 2015. The grievance of the petitioner is that while he had opted for payment of tax on compounded basis in respect of the metal crusher unit, that was being operated by him, and had declared that he was using two secondary crushers and one primary crusher, and the said application for payment of tax at compounded rate was accepted by the respondents, one of the secondary crushing machines could not be installed by the petitioner in the unit. It is his case, therefore, that the assessment that was completed against the petitioner by assuming that he was using two secondary crushers, instead of one secondary crusher, is faulty and therefore ought to be set aside. It is stated that the penalty proposals that were confirmed against him are also based on the same line of reasoning as in the assessment orders and therefore, the said orders should also be quashed in these proceedings under Article 226 of the Constitution of India.

2. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing 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 that the application for payment of tax on compounded basis, in respect of the metal crushing unit that was run by the petitioner, was made on the petitioner's own volition. In the declaration filed by him before the respondent, it is clearly stated that what was installed in the unit was two secondary crushers and one primary crusher. On the basis of the said declaration, the respondent granted the petitioner permission for paying tax on compounded basis under Section 8(b) of the KVAT Act. The tax liability of the petitioner was also fixed accordingly based on the rates that were stipulated under the Act for the respective crushing machines. Ext.P7 series of assessment orders and Ext.P8 series of penalty orders were passed against the petitioner on finding that the petitioner had failed to remit the tax amount that was fixed in respect of the petitioner under Section 8(b) of the KVAT Act. While the petitioner would contend that one of the secondary crushing machines was not in fact installed in the premises and therefore the tax liability of the petitioner had to be computed excluding the said

machine, I find that the said contention cannot be raised by the petitioner in these proceedings especially because the application filed by the petitioner seeking an option to pay tax on compounded basis, was at the choice of the petitioner. Having made a declaration to the effect that there are two secondary crushing units and one primary crushing machine installed in the premises, it was not open to the petitioner to contend to the contrary after the respondents had accepted his application for payment of tax on compounded basis and proceeded with the assessment on that basis. If the petitioner is aggrieved by Ext.P7 series of assessment orders and Ext.P8 series of penalty orders in respect of any computation mistake, then it is for the petitioner to approach the appellate authority/revisional authority under the KVAT Act, against the said orders. I do not see any reason to interfere with the said orders in these proceedings under the Article 226 of the Constitution of India.

The writ petition, in its challenge against Ext.P7 series and Ext.P8 series of orders, therefore fails, and is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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