IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 34573 of 2014 (V)

PETITIONER :

SMT. S. UMARANI, AGED 36 YEARS,
DOOR NO. 240, OPPOSITE GAYATHRI SIZING MILL,
THIRUCHNGODE, NAMAKKAL DISTRICT.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS :
----

1. THE INTELLIGENCE OFFICER,
   SQUAD NO. V, DEPARTMENT OF COMMERCIAL TAXES,
   KASARAGOD - 671 121.

2. THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, KOZHIKODE-673 006.

3. DEPUTY COMMISSIONER,
   COMMERCIAL TAXES, KASARAGOD - 671 121.

R1 TO R3 BY GOVERNMENT PLEADER SRI. SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 34573 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE RELEVANT PAGES OF REGISTRATION CERTIFICATE DATED 02/08/2010.

EXHIBIT-P2: TRUE COPY OF THE PENALTY ORDER PASSED BY THE IST RESPONDENT FOR THE YEAR 2012-13 DATED 26/03/2013.

EXHIBIT-P3: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE IST RESPONDENT DATED 05/06/2014.

EXHIBIT-P4: TRUE COPY OF THE PETITION FOR STAY FILED BY THE PETITIONER BEFORE THE IST RESPONDENT DATED 05/06/2014.

EXHIBIT-P5: TRUE COPY OF THE EARLY HEARING PETITION FILED BY THE PETITIONER BEFORE THE IST RESPONDENT DATED 05/06/2014.

EXHIBIT-P6: TRUE COPY OF THE REVISIONAL ORDER PASSED BY THE 3RD RESPONDENT DATED 10/11/2014.

EXHIBIT-P7: TRUE COPY OF THE DEMAND NOTICE IN FORM NO. 12 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2012-13 DATED 21/04/2014.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) No.34573 of 2014 (V)

..

Dated this the 23rd day of February, 2015

<u>JUDGMENT</u>

The petitioner in the writ petition was served with Ext.P2 penalty order, in respect of a vehicle that was being transported by him. Against the said order imposing penalty, the petitioner preferred an appeal before the 2nd respondent, by treating Ext.P2 order as one that was passed under Section 47 of the Kerala Value Added Tax Act, 2003. The appeal preferred by the petitioner was, however, heard by the 3rd respondent, who treated Ext.P2 order as one that was passed under Section 67 of the KVAT Act. By Ext.P6 order, the appeal preferred by the petitioner was dismissed by the 3rd respondent.

2. It is now pointed out by the learned Government Pleader, that the authority who passed Ext.P2 has since issued a rectified order dated 04.02.2015, making it clear that Ext.P2 order, that was passed by him, was passed under Section 47 of the KVAT Act. It is, therefore, apparent that the appeal originally filed by the petitioner against Ext.P2 order, by treating it as one that was passed under Section 47 of the KVAT Act, was in order and the 2nd respondent was indeed the authority who had jurisdiction to consider the appeal on merits. It is also apparent, therefore, that Ext.P6 order passed by the 3rd respondent is one without

jurisdiction, insofar as an appeal against an order passed under Section 47 lies only before the 2nd respondent. Thus, in the light of the rectification order now passed by the 1st respondent, I quash Ext.P6 order of the 3rd respondent and direct the 2nd respondent to pass fresh orders in the appeal filed by the petitioner, by treating the same as an appeal preferred against an order under Section 47 of the Act. The 2nd respondent shall pass orders as directed in the appeal, within a period of two months from the date of receipt of a copy of this judgment.

I make it clear that, recovery steps pursuant to Ext.P2 penalty order shall be kept in abeyance till such time, as the 2nd respondent passes orders, as directed above, and communicates the same to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/23/02/