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. 34578 of 2014 (V)

PETITIONER(S):

GEORGE MATHEW, AGED 52 YEARS
PARNASALA CATERINGS, KAPT UNION BUILDINGS, PONKUNNAM
KOTTAYAM (DT)

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER
   PONKUNNAM, KOTTAYAM (DT).686574.

2. INTELLIGENCE OFFICER
   COMMERCIAL TAXES, SQUAD NO00II
   KOTTAYAM AT PALAI-686575.

3. INSPECTING ASSISTANT COMMISSIONER
   COMMERCIAL TAXES, PALAI, KOTTAYAM (T)-686575.

4. STATE OF KERALA
   REPRESENTED BY SECRETARY TO GOVERNMENT
   TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
   THIRUVANANTHAPURAM-695001.

R BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR.S.

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

WP(C).No. 34578 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER DATED 30.7.2014 IN ISK II/CR 28/12-13 OF THE 2ND RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE ARREAR NOTICE IN FORM 12A DATED 30.10.2014 ISSUED BY THE IST RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE REPLY DATED 7.11.2014 FILED BY THE PETITIONER BEFORE THE IST RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE LETTER DATED 11.11.2014 ISSUED BY THE IST RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE DEMAND NOTICE IN FORM I BEARING NO RRC 140/PNKM/14-15 DATED 28.11.2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE LETTER NO.C1.54611 DATED 29.1.2009 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.34578 OF 2014 (V)

Dated this the 23rd day of February, 2015

<u>J U D G M E N T</u>

The petitioner, who is a registered dealer of cooked food, impugns Ext.P5 notice issued to him under the Kerala Revenue Recovery Act, demanding an amount of Rs.14,43,890/- towards tax liability under the KVAT Act for the assessment year 2012-13. The facts in the writ petition would disclose that the petitioner, who had, in earlier years opted for payment of tax at compounded rates, did not exercise such an option for the year 2012-13. When an offence was made out by the Department with regard to suppression of turnover during the year in question, the petitioner chose to get the offence compounded under Section 74 of the KVAT Act, on payment of the compounding fee of Rs.4,00,000/- over and in addition to the tax amount. The tax amount was quantified at Rs.14,43,885/- in Ext.P1 order that permitted the petitioner to compound the offence under Section 74 of the KVAT Act. In the writ petition, the case of the petitioner is that in respect of the tax that has been demanded from him in Ext.P5, pursuant to Ext.P1 order, the rate of tax that has to be applied ought to be 0.5%, instead of the regular rate of 5%. In support of his contention, the petitioner would rely on Ext.P6 Circular issued by the Commissioner of Commercial Taxes, which clarified that in the case of cooked food dealers, who have opted for compounding facility, even in respect of suppressed turnover, the tax need to be paid only at 0.5%. It is the case of the petitioner therefore that, even in his case, the tax liability pursuant to the compounding of the offence, should be computed by adopting the rate of tax at 0.5%.

2. I have heard Sri.K.N.Sreekumar, the learned counsel appearing for the petitioner as also Sri.Sudheesh Kumar.S., 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 in the instant case, the petitioner had sought to compound the offence detected by the respondents under Section 74 of the KVAT Act on payment of the tax liability together with a compounding fee. While he has paid the compounding fee pursuant to Ext.P1 order, he has not paid the tax amounts which were determined as payable by him solely for the

reason that his contention is that while determining the tax liability, the rate of tax to be applied is the one that is applicable to persons, who have opted for the compounding facility. I am not impressed with the said contention of the petitioner. It is not in dispute that during the year in question, the petitioner had not opted for payment of tax at compounded rates. The said scheme of payment of compounded rates is one that is available, as an option, to a dealer who chooses to pay tax on that basis, in lieu of the regular method of paying tax pursuant to an assessment as mandated under Section 6 of the KVAT Act. Inasmuch as the petitioner has not opted for payment of tax at the compounded rates, the rate applicable under the compounding scheme will not be attracted in his case. For the same reason, Ext.P6 Circular of the Commissioner of Commercial Taxes also cannot have any application to the case of the petitioner. Resultantly, the writ petition, in its challenge against Ext.P5 demand fails, and is accordingly dismissed.

Counsel for the petitioner would submit that he apprehends that immediate steps will be taken to recover the tax amounts from him. He therefore seeks some time to pay the amounts demanded in

Ext.P5. Taking note of the plea of counsel for the petitioner, I direct that if the petitioner pays the amount demanded in Ext.P5 within a period of ten days from today, then the recovery steps pursuant to Ext.P5 shall not be pursued against him.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp