IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 34539 of 2015 (N)
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PETITIONER(S):

AJITHKUMAR,
M/S. SREE VINAYAKA MOTORS, PULAMON P.O.,
KOTTARAKKARA, KOLLAM DISTRICT.

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

RESPONDENT(S):

ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE, KOTTARAKKARA - 691 506.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 34539 of 2015 (N)
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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 COPY OF NOTICE ISSUED FOR THE YEAR 2011-12 ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.P2 COPY OF REPLY FILED BY THE PETITIONER BEFORE THE RESPONDENT.

EXT.P3 COPY OF ORDER ISSUED BY THE RESPONDENT FOR THE YEAR 2011-12.

EXT.P4 COPY OF JUDGMENT IN W.P(C) NO 11802/15 OF THIS HON'BLE COURT.

EXT.P4(A) COPY OF JUDGMENT IN R.P NO 514/15 OF THIS HON'BLE COURT.

EXT.P5 COPY OF NOTICE ISSUED BY THE RESPONDENT FOR THE YEAR 2011-12.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 34539 of 2015

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Dated this the 8th day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 notice issued to the petitioner under Section 67 of the Kerala Value Added Tax Act, hereinafter referred to as the KVAT Act, proposing a penalty for the assessment year 2011-2012. The main contention raised in the writ petition is that, on an earlier occasion, there was a proposal for tax, interest and penalty that was raised against the petitioner and by Ext.P3 order, the assessing officer, while passing orders under Section 25(1) of the KVAT Act, confined the demand against the petitioner to differential tax and interest, thereby indicating that the proposal for penalty had been dropped. The grievance of the petitioner in the writ petition is that having dropped the penalty proposal against the petitioner, it was not open to the respondent to now issue Ext.P5 notice under Section 67 proposing the very same penalty, that had been earlier dropped against the petitioner.

I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondent.

The learned Government Pleader would rely on the statement filed on behalf of the respondent, wherein, it is pointed out that the original notice under Section 25 was only one that demanded differential tax and interest from the petitioner and the inclusion of a penalty element in the said notice was a mistake as indeed it could not have been included in terms of Section 25 of the KVAT Act. It is pointed out therefore, that when Ext.P3 order was passed, confirming the demand of tax and interest, the said order complied with the requirement of Section 25 of the KVAT Act, and there was no demand of penalty. The demand of penalty was made only by Ext.P5 notice, after taking note of the fact that the petitioner did not comply with the directions in Ext.P4 judgment with regard to payment of defaulted tax arrears in installments. Counsel for the petitioner would point out that, although by Ext.P4 judgment, the petitioner was required to pay the defaulted tax amounts in twelve monthly installments, the petitioner could pay only two installments, as per the directions in Ext.P4 judgment, and subsequently, he had approached the Hon'ble Supreme Court, and by an order dated 27.11.2015, he was permitted to pay the defaulted amounts in installments of Rs.50 lakhs per month, with which directions he is currently complying.

I take note however, of the fact that the explanation of the respondent to the alleged dropping of penalty proceedings against the petitioner in Ext.P3 order, is a justifiable one and hence, I don't see any reason to interfere with Ext.P5 notice for penalty at this stage, in these proceedings under Article 226 of the Constitution of India. Accordingly, I dismiss the writ petition in its challenge against Ext.P5 notice and relegate the petitioner to his alternate remedy of filing a reply to the said notice, and getting the matter adjudicated before the respondent. The petitioner shall, however, be afforded an opportunity to compound the offence departmentally, in accordance with Section 74 of the KVAT Act, before proceeding further with the adjudication pursuant to Ext.P5 notice.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /8.12.15