IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 34691 of 2015 (J)

PETITIONER(S):

M/S. CHIRAKEKKARAN GLASS HOUSE (P) LTD.,
DOOR NO.13/555, SAWMILL ROAD, KOORKENCHERY,
THRISSUR-680 007, REPRESENTED BY ITS
MANAGING DIRECTOR SUNNY ANTO C.

BY DR.K.B.MUHAMED KUTTY, SENIOR ADVOCATE.
ADVS. SRI.K.J.ABRAHAM,
SRI.NIKHIL JOHN.

RESPONDENT(S):

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1. THE INTELLIGENCE OFFICER, SQUAD NO.II,
   DEPARTMENT OF COMMERCIAL TAXES,
   WEST FORT, THRISSUR-01.

2. THE ASSISTANT COMMISSIONER (ASSMT.),
   OFFICE OF THE ASSISTANT COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   SPECIAL CIRCLE, COMMERCIAL TAX COMPLEX,
   POOTHOLE, THRISSUR-680 004.

3. DEPUTY COMMISSIONER,
   OFFICE OF THE DEPUTY COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   COMMERCIAL TAX COMPLEX, POOTHOLE,
   THRISSUR-680 004.

BY GOVT. PLEADER SRI.RANJITH.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 34691 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	THE PETITIONER WAS SERVED WITH A PENALTY ORDER NO.ITC-43/2009 DATED 13TH JULY 2012.
EXT.P2	COPY OF THE JUDGMENT IN WP(C).NO.22533 OF 2012 DATED 29/11/2012.
EXT.P3	COPY OF THE SECOND PENALTY ORDER NO.ITC 43/2009-10 DATED 08/07/2014.
EXT.P4	COPY OF THE ORDER IN WP(C).NO.20889/2014 DATED 29/08/2014.
EXT.P5	COPY OF THE ORDER IN WP(C).NO.17948/2015 DATED 16/06/2015.
EXT.P6	COPY OF THE ARGUMENT SUBMITTED BEFORE THE 3RD RESPONDENT DATED 19/09/2015.
EXT.P7	COPY OF THE ARGUMENT DATED 11/09/2015.
EXT.P8	COPY OF THE PETITION FILED BY THE PETITIONER TO ACCEPT DOCUMENTS DATED 10/09/2015.
EXT.P9	COPY OF THE ORDER IN RP NO.148/2014 AND 248/2014 DATED 26/10/2015.
EXT.P10	COPY OF THE NOTICE NO.332081470694C/2009-10 DATED 06/11/2015.
EXT.P11	COPY OF THE AREAR NOTICE IN FORM NO.12A DATED 12/11/2015.
EXT.P12	COPY OF THE ACKNOWLEDGMENT OF THE RECEIPT DATED 11/09/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.34691 of 2015

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Dated this the 17th day of November 2015

JUDGMENT

The challenge in the writ petition is against Ext.P9 order passed by the 3rd respondent as revisional authority in a revision petition filed by the petitioner against an order imposing penalty on him under the KVAT Act. The grievance of the petitioner is essentially that in Ext.P9 revision order, the 3rd respondent does not expressly refer to the material that was available before the Intelligence Officer, who had imposed the penalty on the petitioner and there is no consideration of the material produced by the petitioner, at the time of hearing the revision petition. It is also the contention of the petitioner that pursuant to Ext.P9 order, the 2nd respondent Assessing authority has issued Ext.P10 notice proposing an assessment on best judgment basis, under Section 25 (1) of the KVAT Act. The said assessment is proposed to be completed expeditiously without even affording the petitioner an opportunity to submit his reply and objection to the pre-assessment notice.

2. I have heard Sri.K.B.Muhamedkutty, the learned senior counsel, duly instructed by Sri.Abraham K.J., for the petitioner and the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case, and the submissions made across the Bar, I find that although various contentions are raised in the writ petition against Ext.P9 revision order, the petitioner has an effective alternate remedy against Ext.P9 revision order, by filing a second revision before the Commissioner of Commercial Taxes, Thiruvananthapuram. I am of the view that, since the dispute raised in the writ petition against Ext.P9 order is factual in nature, it would be in the interests of justice to direct the petitioner to pursue the revisional remedy before the Commissioner of Commercial Taxes, who, I suo motu implead in this writ petition, as the additional 4th respondent. I reject the challenge of the petitioner against Ext.P9 order in this writ petition and relegate the petitioner to his alternate remedy of preferring a revision petition before the additional 4th respondent, under the KVAT Act. If the petitioner files a revision petition within the statutory time permitted for filing the same under KVAT Act, then the additional 4th respondent shall consider the revision petition on merits and pass appropriate orders thereon, after hearing the petitioner, within a period of three months from the date of receipt of a copy of this judgment. Taking note of the

submission of the learned senior counsel that during the proceedings before the lower authority, the petitioner had also paid an amount of Rs.37,05,060/- towards the liability confirmed on the petitioner by the order of penalty, I direct that pending the passing of final orders in the revision petition to be preferred by the petitioner before the 4th respondent, the recovery steps for recovery of amounts confirmed against the petitioner by Exts.P1 and P3 orders shall be kept in abeyance. As regards Ext.P10 assessment notice, that has been served on the petitioner, I make it clear that the 2nd respondent Assessing authority shall afford the petitioner an opportunity of hearing at his office on 15.12.2015. It will be open to the petitioner to file objections to Ext.P10 assessment notice and produce any other relevant material to substantiate his contentions on merits at the time of hearing before the 2nd respondent Assessing authority on 15.12.2015. The 2nd respondent shall thereafter proceed to pass orders of assessment in relation to the petitioner pursuant to Ext.P10 notice, within a period of one month thereafter.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/