IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 35232 of 2014 (D)

PETITIONER(S):

MUHAMMED JEELI K.P, AGED 46 YEARS,
S/O.ESSA RAWUTHAR, KOLLAM PARAMBIL HOUSE,
THIRUVAMBADI KUNNU, KAPPIL P.O., VANDOOR VIA,
MALAPPURAM DISTRICT - 679 328, PROPRIETOR,
M/S.STONE AND ROCK, NADUVATH P.O., THIRUVALI,
MALAPPURAM DISTRICT.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENT(S):
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1. STATE OF KERALA,
   REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM - 695 001.

2. THE COMMISSIONER OF COMMERCIAL TAX DEPARTMENT,
   OFFICE OF THE COMMISSIONER OF COMMERCIAL TAX,
   VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 001.

3. THE COMMERCIAL TAX OFFICER,
   COMMERCIAL TAX CHECK POST, WALAYAR P.O,
   PALAKKAD - 678 624.

4. THE COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST, WALAYAR P.O.,
   PALAKKAD - 678 624.

5. THE COMMERCIAL TAX OFFICER,
   NILAMBUR CHECK POST, NILAMBUR P.O.,
   MALAPPURAM - 679 329.

6. UDAYAKUMAR,
   COMMERCIAL TAX INSPECTOR, COMMERCIAL TAX CHECK POST,
   WALAYAR P.O., PALAKKAD- 678 624.

R1 TO R5 BY SR.GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 35232 of 2014 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: **TRUE COPY OF THE INVOICE DATED 07/11/2014 ISSUED BY THE COSIGNER M/S. J.K.GOWDA TRADERS, DOOR NO. GAGANAGHATTA, TIPTUR, KARNATAKA.**

EXHIBIT-P2: **TRUE COPY OF THE ADVANCE TAX UTILIZATION RECEIPT DATED 19/11/2014 ISSUED BY THE AUTHORITIES.**

EXHIBIT-P3: **TRUE COPY OF THE E-CHALAN DATED 18/11/2014 OF THE DEPARTMENT.**

EXHIBIT-P4: **TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 47 (2) OF THE KVAT ACT.**

EXHIBIT-P5: **TRUE COPY OF THE JUDGMENT IN W.P(C) NO.31217/2014 DATED 22/11/2014.**

EXHIBIT-P6: **TRUE COPY OF THE CIRCULAR NO. 50/2006 DATED 18/12/2006 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.35232 of 2014 (D)

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Dated this the 5th day of January, 2015

JUDGMENT

The petitioner is aggrieved by the collection of advance tax in respect of a consignment of goods brought by him from outside the state. The grievance in the writ petition is that the respondents are erroneously classifying the goods brought by the petitioner under a different head, so as to collect advance tax by showing the commodity transported as one that would come within the ambit of Ext.P6 circular. The relief sought for in the writ petition is for a direction to the respondents not to collect advance tax from the petitioner, or insist on payment of advance tax for transportation of goods coming under the category of marbles, granite etc., mentioned in notification SRO No.82/2006 issued by the first respondent.

2. On a consideration of the reliefs sought for in the writ petition, I am constrained to hold that they are not reliefs that can be granted in proceedings under Article 226 of the Constitution of India, in as much as the issue, as to whether the commodity, that is transported by the petitioner on any particular occasion, merits classification as marbles, granite

or some other category of stone, is one that will have to be determined based on a physical verification of the goods that are actually transported. There cannot be any direction given in the writ petition in respect of a transportation that is yet to occur. In that view of the matter, I do not see any reason to entertain the present writ petition which seeks a relief that is anticipatory in nature. It will be open to the petitioner to approach the respondents, for an adjustment of the advance tax already paid by him in respect of the goods transported in the past. The present writ petition is dismissed as not maintainable.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/06/01/