

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 35506 of 2014 (K)

PETITIONER :

**M/S. MANJALLY JEWELLERS,
BASILICA PLATINUM JUBILEE BUILDING,
NEAR NEW CHURCH THRISSUR - 680 001,
THRISSUR DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER, SRI.M.V.JOSEPH.**

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):

- 1. INTELLIGENCE OFFICER,
COMMERCIAL TAXES, SQUAD NO.IV,
PANKAJ BUILDING,THRISSUR-680 004.**
- 2. INSPECTING ASSISTANT COMMISSIONER (INT),
COMMERCIAL TAXES, PANKAJ BUILDING,THRISSUR-680 004**
- 3. DEPUTY COMMISSIONER (INTELLIGENCE),
COMMERCIAL TAXES, EDAPPALLY, ERNAKULAM,
COCHIN-682 024**
- 4. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, 1ST CIRCLE, CIVIL STATION,
AYYANTHOL, THRISSUR-680 003**
- 5. INDIAN TECHNICAL MANAGEMENT CELL,
COMMERCIAL TAXES, TAX TOWER,
KARAMANA,THIRUVANANTHAPURAM-695 033,
REPRESENTED BY ITS ASSISTANT COMMISSIONER.**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - COPY OF REGISTRATION ISSUED TO THE PETITIONER BY THE 4TH RESPONDENT UNDER THE KVAT ACT
- P2 - COPY OF PARTICIPATION CERTIFICATE FOR STALL NO. 'ELITE-I' ISSUED TO THE PETITIONER FOR THE EXHIBITION AT COCHIN.
- P3 - COPY OF PERMISSION DATED 22-11-2014 ISSUED BY THE 4TH RESPONDENT IN FORM ID FOR PARTICIPATING IN EXHIBITION
- P4 - COPY OF INVOICE NO.1583 DATED 05-12-2014 RAISED BY THE PETITIONER FOR TRANSPORT OF GOODS FOR EXHIBITION STALL FOR 6 KGS. OF GOLD ORNAMENTS
- P4(A) - COPY OF INVOICE NO.1584 DATED 05-12-2014 RAISED BY THE PETITIONER FOR TRANSPORT OF GOODS FOR EXHIBITION STALL FOR 6 KGS. OF GOLD ORNAMENTS
- P5 - COPY OF ONLINE DELIVERY NOTE NO.320805/DN/3674/2014 DATED 05-12-2014 RAISED BY THE PETITIONER PURSUANT TO EXT.P4 INVOICE FOR 6 KGS. OF GOLD ORNAMENTS.
- P5(A) - COPY OF ONLINE DELIVERY NOTE NO.320805/DN/3677/2014 DATED 05-12-2014 RAISED BY THE PETITIONER PURSUANT TO EXT.P4(A) INVOICE FOR 6 KGS. OF GOLD ORNAMENTS.
- P6 - COPY OF DECLARATION DATED 06-12-2014 AT 08.15 PM PREPARED FOR TRANSPORT OF 320 GRAMS OF DAMAGED GOLD ORNAMENTS, FROM THE STALL TO THRISSUR IN THE ABSENCE OF ONLINE FACILITY BY HANG OF DEPARTMENTAL SITE.
- P7 - COPY OF STOCK REGISTER KEPT IN THE STALL, DURING EXHIBITION
- P8 - COPY OF SHOP INSPECTION REPORT 07-12-2014 PREPARED BY 1ST RESPONDENT IN THE PRESENCE OF RESPONDENTS 1 AND 2 RECORDING ENTIRE PHYSICAL STOCK
- P9 - COPY OF ONLINE DELIVERY NOTE NO.320805/DN/3709/2014 DATED 08-12-2014 RAISED FOR TAKING BACK THE GOLD ORNAMENTS FROM THE EXHIBITION STALL TO THRISSUR
- P10 - COPY OF NOTICE NO.ITC/IV/57/14-15 DATED 08-12-2014 ISSUED U/S.67(1) OF THE KVAT ACT BY THE 2ND RESPONDENT PROPOSING PENALTY
- P10(A) - COPY OF REVISED NOTICE NO.ITC/IV/57/14-15 DATED 09-12-2014 ISSUED U/S.67(1) OF THE KVAT ACT BY THE 1ST RESPONDENT REPLACING EXT.P10.

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P11 - COPY OF REPLY DATED 15-12-2014 SUBMITTED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT AGAINST EXT.P10

P11(A) - COPY OF REPLY DATED 21-12-2014 SUBMITTED BY THE PETITIONER
BEFORE THE 1ST RESPONDENT AGAINST EXT.P10(A) WITH PROOF OF
ACKNOWLEDGEMENT

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.35506 of 2014 (K)

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Dated this the 14th day of January, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P10(a) notice that is served on the petitioner, proposing to impose a penalty of Rs.16,26,768/- under Section 67(1)(b) of the Kerala Value Added Tax Act, 2003. While the petitioner has preferred Ext.P11(a) reply to the said notice that was served on him, the apprehension of the petitioner is that, the adjudication in respect of Ext.P10(a) notice might be completed by the first respondent, without verifying the books of accounts of the petitioner. It is also the apprehension of the petitioner that, although Ext.P10(a) revised notice expressly states that the earlier notice (Ext.P10) is withdrawn, the earlier notice having been issued by a superior authority (the second respondent), the first respondent may not have the authority to withdraw Ext.P10 notice. It is for this reason that the petitioner has preferred the present writ petition.

2. I have heard Sri.Tomson T.Emmanuel, learned counsel appearing for the petitioner and Smt.Sobha Annamma Eappen, learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and

the submissions made across the Bar, I take note of the submission of the learned Government Pleader, on instructions, that Ext.P10 notice has in fact been withdrawn by the second respondent himself and in Ext.P10(a) that fact was only intimated to the petitioner by the first respondent. That apart, as rightly pointed out by the learned Government Pleader, there appears to be no basis for the apprehension, that the first respondent will not peruse and consider the books of accounts produced by the petitioner, while adjudicating Ext.P10(a) notice, based on Ext.P11(a) reply preferred by the petitioner. Under these circumstances, while I am not inclined to interfere with Ext.P10 (a) notice in these proceedings under Article 226 of the Constitution of India, I direct the first respondent to consider and pass orders, pursuant to Ext.P10(a) notice issued by him, only after considering the objections of the petitioner in Ext.P11(a) reply, perusing the books of accounts produced by the petitioner, and after affording him an opportunity of hearing in the matter. The first respondent shall pass orders in the matter within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE