IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 35684 of 2015 (I)

PETITIONER(S):

M/S. OZONE GRANITES PVT. LTD.,
VP II/427, MANKUZHY, WEST VENGOLA P.O.,
PERUMBAVOOR, ERNAKULAM DISTRICT, PIN-683556,
REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM
SRI.K.H.ANSAR

RESPONDENT(S):
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1. **THE STATE OF KERALA,**
   REPRESENTED BY ITS COMMISSIONER
   TO DEPARTMENT OF COMMERCIAL TAXES
   SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. **THE ASSISTANT COMMISSIONER-II,**
   COMMERCIAL TAXES DEPARTMENT, SPECIAL CIRCLE,
   PERUMBAVOOR-687101.

BY GOVERNMENT PLEADER SMT.K.T.LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 35684 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : TRUE COPY OF THE NOTICES DT.20-6-2015 FOR THE ASSESSMENT YEAR 2011-12.

P1A : TRUE COPY OF THE NOTICES DT.20-6-2015 FOR THE ASSESSMENT YEAR 2012-13.

P1B : TRUE COPY OF THE NOTICES DT.20-6-2015 FOR THE ASSESSMENT YEAR 2013-14.

P2 : TRUE COPY OF THE OBJECTION DT.16-9-2015 PERTAINING TO THE ASSESSMENT YEAR 2011-2012.

P2A : TRUE COPY OF THE OBJECTION DT.16-9-2015 PERTAINING TO THE ASSESSMENT YEAR 2012-2013.

P2B : TRUE COPY OF THE OBJECTION DT.16-9-2015 PERTAINING TO THE ASSESSMENT YEAR 2013-2014.

P3 : TRUE COPY OF THE ORDER OF PENALTY AS PER SEC.10(D) READ 10A OF CST ACT, DT.15-10-2015 PERTAINING TO ASSESSMENT YEAR 2011-12.

P3A : TRUE COPY OF THE ORDER OF PENALTY AS PER SEC.10(D) READ 10A OF CST ACT, DT.15-10-2015 PERTAINING TO ASSESSMENT YEAR 2012-13.

P3B : TRUE COPY OF THE ORDER OF PENALTY AS PER SEC.10(D) READ 10A OF CST ACT, DT.15-10-2015 PERTAINING TO ASSESSMENT YEAR 2013-14.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.35684 OF 2015 (I)

Dated this the 4th day of December, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P3 series of penalty orders that have been passed in relation to the petitioner for the assessment years 2011-12 to 2013-14 under the Central Sales Tax Act. The grievance of the petitioner against Ext.P3 series of orders is essentially that, while passing the said orders, the 2nd respondent did not apply his mind to the statutory provisions of Section 10(d) of the CST Act, which mandates that, it is only if a person, after purchasing goods for any purposes specified in clause (b) or clause (c) or clause (b) of Section 8 (3) or (6), fails, without reasonable excuse to make use of the goods for any of the specified purposes, that the said person shall be liable for a penalty under Section 10A of the CST Act. According to the petitioner, while in Ext.P3 series of orders, the 2nd respondent comes to a finding that the vehicles, which had been purchased by the petitioner, were used for transporting material from the crushing unit to the site of various customers, there is no specific finding therein that the vehicles were not also used for the purposes specified in the above statutory provision. It is contended that so long as it is found that the vehicles are used for the specified purposes, then the mere fact that the vehicles have also been used for incidental purposes of transporting the crushed metal to the premises of the customers cannot take away the exemption that is envisaged under the Statute.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar and on a perusal of Ext.P3 series of orders, I find that the 2nd respondent has, while imposing a penalty on the petitioner under Section 10A read with Section 10(b) of the CST Act, proceeded primarily on the ground that the petitioner had used the vehicles purchased by him, by availing concessional rate of tax, for the purposes of transporting crushed metal from his unit to the premises of various customers. There is no finding in the impugned orders as regards whether, the petitioner had in fact used the vehicles purchased by him for the uses specified in

Section 8 of the CST Act. In my view, such a finding as to whether or not the petitioner had also used the items, procured at concessional rate of tax, for the uses specified in the Statute, had to be arrived at before a decision could be taken regarding the imposition of penalty on the petitioner. Inasmuch as I do not see the said exercise having been done in Ext.P3 series of orders, I quash the same and direct the 2nd respondent to consider the matter afresh after hearing the petitioner. To enable the 2nd respondent to do so, I direct the petitioner to appear before the 2nd respondent, at his office, at 11.00 a.m. on 17.12.2015. The 2nd respondent shall pass orders, as directed, within a period of one month thereafter.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/4/12/15