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. 37111 of 2015 (L)

PETITIONER(S) :

M/S.POPULAR TRADERS,
A REGISTERED PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE AT POPULAR TOWERS, VAKAYAR P.O, KONNI, PATHANAMTHITTA, PIN 689 698, REPRESENTED BY ITS MANAGING PARTNER, SRI THOMAS DANIEL

BY ADVS.SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR
SRI.K.AMAL NATH NAIK
SMT.DEEPTI SUSAN GEORGE
SRI.ARJUN RADHAKRISHNAN NAIR
SMT.ANUSREE SURESH

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

2. THE INTELLIGENCE OFFICER,
SQUAD NO.1, OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL TAXES, MINI CIVIL STATION, PATHANAMTHITTA- 689 645.

BY GOVERNMENT PLEADER SRI.R.RENJITH

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

Msd.

WP(C).No. 37111 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: **TRUE COPY OF THE NOTICE DATED 14/10/2015 ISSUED BY THE 2ND RESPONDENT UNDER SECTION 67(1)OF THE KERALA VALUE ADDED TAX ACT, 2003**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.37111 of 2015

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Dated this the 8th day of December 2015

JUDGMENT

The challenge in the writ petition is against Ext.P1 notice issued to the petitioner under Section 67(1) of the KVAT Act. The grievance of the petitioner in the writ petition is essentially that in the notice issued to him, there are references made to certain amounts which, according to the petitioner, do not form part of the turn over of the petitioner and pertain to amounts received by a sister concern, in connection with the money lending services rendered by the said sister concern. The petitioner therefore contends that the inclusion of the said amounts, in a notice issued to the petitioner, proposing a penalty under the KVAT Act, would render the very notice illegal since the authorities under the KVAT Act would not have the jurisdiction to levy a tax on the said amounts which are covered by the various receipts shown in the name of the sister concern.

2. I have heard Sri.Aswin Gopakumar, the learned counsel for the petitioner and the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that in so far as Ext.P1 is only a notice that is issued to the petitioner, proposing a penalty, the petitioner has an effective alternate remedy of approaching the 2nd respondent and clarifying the factual position in the reply to the notice served on him. It is only if, notwithstanding the specific stand of the petitioner in the reply, the respondents proceed to impose a penalty on the petitioner by taking into account amounts which are not established as relating to the turnover of the petitioner for the purposes of the KVAT Act, that the petitioner can impugn the orders passed by the respondents on the ground of lack of jurisdiction. Thus, relegating the petitioner to the remedy of filing a reply to Ext.P1 notice, the writ petition in its challenge against Ext.P1, is dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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