IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C).No. 37876 of 2015 (H)

PETITIONER(S):

M/S.SAIT NAGJEE PURUSHOTHAM CO.PVT.LTD.,
TRIKKOVIL LANE, BIG BAZAR, CALICUT,
REPRESENTED BY ITS DIRECTOR, SANDEEP P MEHTA.

BY ADVS.SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENT(S):

ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, SPECIAL CIRCLE I, ERANCHIPALAM
KOZHIKODE - 673005.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 37876 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: **PHOTOCOPY OF NOTICE U/S.25(1) OF KVAT ACT DT. 09.12.2015 FOR THE YEAR 2011.12**

P2: **PHOTOCOPY OF NOTICE U/S.25(1) OF KVAT ACT DT. 09.12.2015 FOR THE YEAR 2012.13**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 37876 of 2015
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Dated this the 15th day of December, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P1 and P2 pre-assessment notices issued under section 25(1) of the Kerala Value Added Tax act. It is the case of the petitioner that the notices have been issued without jurisdiction in that the transaction in question was a stock transfer, which would not attract tax liability under the KVAT Act.

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

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that Exts.P1 and P2 are merely pre-assessment notices, that have been issued by the respondent proposing an assessment under the KVAT Act. No doubt, counsel for the petitioner would vehemently contend that there is no taxable event as would necessitate an assessment under the KVAT Act. I am of the view that, such a contention would have to be first raised before the respondent in a reply to Exts.P1 and P2 pre-assessment notices. The notices

themselves cannot be impugned in these proceedings under Article 226 of the Constitution of India. Accordingly, I reject the challenge in the writ petition against Exts.P1 and P2 notices and relegate the petitioner to his alternate remedy of approaching the respondent with a reply to the said notices and getting the matter adjudicated by the respondent.

The writ petition is disposed as above.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /15.12.15