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. 38044 of 2015 (E)

PETITIONER(S):

M/S. TECPRO INFRA-PROJECTS LIMITED CRAN 91,
PONEKKARA ROAD, EDAPPALLY, KOCHI 682 024,
REPRESENTED BY ITS DIRECTOR MR.AJAYAKUMAR BISHNOI

BY ADV. SMT.K.LATHA

RESPONDENT(S):

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1. THE STATE OF KERALA,
   REPRESENTED BY CHIEF SECRETARY, SECRETARIATE,
   THIRUVANANTHAPURAM 695 001.

2. ASSISTANT COMMISSIONER (WC),
   O/O.THE DEPUTY COMMISSIONER, COMMERCIAL TAXES
   ERNAKULAM, 682 019.

3. THE INSPECTING ASSISTNAT COMMISSIONER,
   COMMERCIAL TAXES, KAKKANAD, ERNAKULAM 682 030.

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. 38044 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- THE TRUE COPY OF THE NOTICE U/S.25(1) OF THE KVAT ACT 2003 FOR THE YEAR 2013-14 DATED 23RD JULY 2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITONER

P2- THE TRUE COPY OF THE REVISED NOTICE U/S 25(1) OF THE KVAT ACT DATED 5.10.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER

P3- THE TRUE COPY OF THE REPLY DATED 25TH AUGUST 2015, 5TH SEPTEMBER 2015, 29TH SEPTEMBER 2015, 30.9.2015 AND 6TH OCTOBER 2015 FILED BY THE PETITINER BEFORE THE SECOND RESPONDENT

P4- THE TRUE COPY OF THE LETTER DATED 30TH SEPTEMBER 2015 FILED BY THE PETITIONER WHICH WAS DULY ACKNOWLEDGED BY THE SECOND RESPONDENT ALONG WITH THE STATEMENT OF DETAILS OF 20F CERTIFICATE FOR THE YEAR 2013-14 AND THE COPY OF CORRESPONDING FROM 20F

P5- THE TRUE COPY OF THE ASSESSMENT ORDER NO.32072001175/13-14 DATED 10.9.2015 ISSSUED BY THE SECOND RESPONDENT TO THE PETITONER

P6- THE TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN OTREV NO.49 OF 2014 DATED 25TH DAY OF SEPTEMBER

P6- THE TRUE COPY OF THE DEMAND NOTICE FOR THE YEAR 2013-14 IN FORM NO.12 DTED 10.9.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER BASED ON THE P5 ASSESSMENT ORDER

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.38044 of 2015

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Dated this the 15th day of December, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 order of assessment passed in relation to the petitioner under the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act') for the assessment year 2013-2014. The contention of the petitioner against Ext.P5 is essentially that Ext.P5 order was passed solely for the reason that the petitioner had not produced the audited statements in Form 13/13A of the KVAT Act and the additions made in respect of the petitioner were solely on that ground. It is stated that by Ext.P6 judgment of this Court, it has been made clear that a proposal for re-assessment under Section 25 of the KVAT Act cannot be based solely on the non-production of an audited statement in Form 13 and Form 13A by the assessee. The submission of learned counsel for the petitioner therefore is that going by Ext.P6 judgment of this Court, the assessment order is illegal.

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

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, in Ext.P5 assessment order, the non-production of audited statements in Form 13 and Form 13A is only one of the reasons that weighed with the Assessing Officer while completing the assessment against the petitioner. In Ext.P5 order, there is a detailed consideration of the various grounds that were urged against the petitioner in the pre-assessment notice, and after consideration of the same the assessment was completed in the manner indicated in Ext.P5. While the petitioner would raise various contentions against Ext.P5, I am of the view that, against Ext.P5 order the petitioner has an effective alternate remedy by way of filing an appeal before the appellate authority under the KVAT Act. The challenge in the writ petition against Ext.P5 order is therefore rejected. Counsel for the petitioner would submit that the petitioner would also like to explore his remedy of filing a rectification application against Ext.P5 order. Taking note of the said submission, I make it clear that, while the writ petition in its

challenge against Ext.P5 order is rejected, the petitioner is free to pursue either the remedy of seeking a rectification of Ext.P5 order or the remedy of filing an appeal against Ext.P5 order in accordance with the statutory provisions.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/15.12.15