

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

WP(C).No. 38274 of 2015 (H)

PETITIONER:

TARA SANITARY WARES AGED 50 YEARS
GOODWILL TOWERS, NEAR PLAMOODU BRIDGE, PATTOM
THIRUVANANTHAPURAM-695 004
REPRESENTED BY ITS PARTNER JOSE KURIAKOSE.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENTS:

1. INTELLIGENCE OFFICER
SQUAD NO.VII, COMMERCIAL TAXES,
THIRUVANANTHAPURAM AT NEYYATTINKARA.
2. THE ASSISTANT COMMISSIONER (ASSESSMENT)
COMMERCIAL TAXES, SPECIAL CIRCLE, TAX TOWERS
KARAMANA, THIRUVANANTHAPURAM-695 002.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1. COPY OF THE SIR NO.208714 DATED 18/8/2014.
- EXT.P1(A). COPY OF THE SIR NO.214465 DATED 18/8/2014.
- EXT.P1(B). COPY OF THE SIR NO.229335 DATED 18/8/2014.
- EXT.P1(C). COPY OF THE SIR NO.208934 DATED 18/8/2014.
- EXT.P2. COPY OF THE NOTICE DATED 26/8/2014 ISSUED BY THE 1ST RESPONDENT
- EXT.P3. COPY OF THE LETTER DATED 11/9/2014.
- EXT.P4. COPY OF THE NOTICE DATED 12/9/2014 ISSUED BY THE 1ST RESPONDENT
- EXT.P5. COPY OF THE ADJOURNMENT APPLICATION DATED 23/9/2014.
- EXT.P6. COPY OF THE NOTICE DATED 4/10/2014 OF THE 1ST RESPONDENT
- EXT.P7. COPY OF THE LETTER DATED 23/10/2014 REQUESTING RETURN OF THE RECORDS
- EXT.P8. COPY OF THE LETTER DATED 28/10/2014 FILED BEFORE THE 1ST RESPONDENT
- EXT.P9. COPY OF THE NOTICE DATED 15/01/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2009-10
- EXT.P9(a). COPY OF THE NOTICE DATED 15/01/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2010-11
- EXT.P9(b). COPY OF THE NOTICE DATED 14/01/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2011-12
- EXT.P9(c). COPY OF THE NOTICE DATED 14/01/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2012-13
- EXT.P9(d). COPY OF THE NOTICE DATED 14/01/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2013-14
- EXT.P9(e). COPY OF THE NOTICE DATED 14/01/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2014-15
- EXT.P10. COPY OF THE ORDER DATED 4/4/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2009-10
- EXT.P10(a). COPY OF THE ORDER DATED 4/4/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2010-11
- EXT.P10(b). COPY OF THE ORDER DATED 4/4/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2011-12
- EXT.P10(c). COPY OF THE ORDER DATED 4/4/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2012-13
- EXT.P10(d). COPY OF THE ORDER DATED 4/4/2015 ISSUED BY THE 1ST RESPONDENT U/S.67 FOR THE YEAR 2013-14

EXT.P10(e). COPY OF THE ORDER DATED 4/4/2015 ISSUED BY THE 1ST
RESPONDENT U/S.67 FOR THE YEAR 2014-15

EXT.P11. COPY OF THE JUDGMENT DATED 16/6/2015 OF THIS HONOURABLE COURT
IN WPC NO.16117/2015.

EXT.P11(a). COPY OF THE ORDER DATED 21/8/2015 OF THIS HONORABLE
COURT IN WPC NO.16117/2015.

EXT.P12. COPY OF THE NOTICE DATED 20/10/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2009-10.

EXT.P12(a). COPY OF THE NOTICE DATED 20/10/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2010-11

EXT.P12(b). COPY OF THE NOTICE DATED 20/10/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2011-12

EXT.P12(c). COPY OF THE NOTICE DATED 20/10/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2012-13

EXT.P12(d). COPY OF THE NOTICE DATED 20/10/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2013-14

EXT.P12(e). COPY OF THE NOTICE DATED 20/10/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2014-15

EXT.P13. COPY OF THE LETTER DATED 3/11/2015 ADDRESSED TO THE 1ST
RESPONDENT

EXT.P14. COPY OF THE ORDER DATED 27/11/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2009-10.

EXT.P14(a). COPY OF THE ORDER DATED 27/11/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2010-11.

EXT.P14(b). COPY OF THE ORDER DATED 27/11/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2011-12

EXT.P14(c). COPY OF THE ORDER DATED 27/11/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2012-13

EXT.P14(d). COPY OF THE ORDER DATED 27/11/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2013-14

EXT.P14(e). COPY OF THE ORDER DATED 27/11/2015 ISSUED BY THE 1ST
RESPONDENT U/S.S.67 FOR THE YEAR 2014-15

EXT.P15. COPY OF THE PETITION FILED BY THE PETITIONER DATED
18.12.2015 BEFORE THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS NIL

//TRUE COPY//

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No. 38274 of 2015

Dated this the 22nd day of December 2015

JUDGMENT

The challenge in the writ petition is against Ext.P14 series of penalty orders, that have been passed in relation to the petitioner for the assessment years 2009-10 to 2014-15. Although various grounds have been raised in the writ petition in its challenge against Ext.P14 series of penalty orders, I am of the view that against Ext.P14 series of penalty orders, the petitioner has an effective alternate remedy by way of filing a revision petition before the revisional authority under the Kerala Value Added Tax Act. This is more so because I am of the view that in Ext.P14 series of penalty orders, the 1st respondent has found that the material relied upon by the 1st respondent while coming to definite conclusions against the petitioner, were all materials that were seized from the petitioner and were available with him, and there was no new material that was introduced before confirming the orders of penalty against the petitioner. Counsel for the petitioner would, however, submit that the he would like to explore the option of filing a rectification application against Ext.P14 series of orders, since it is his specific case that in Ext.P14 series of penalty orders,

there is a mistake with regard to the extent of suppression that was detected by the respondents and the computation of the alleged suppressed turnover. Accordingly, while dismissing the writ petition in its challenge against Ext.P14 series of penalty orders, I direct the 1st respondent, before whom Ext.P15 rectification application has been preferred by the petitioner, to consider and pass orders on the same, after hearing the petitioner, within a period of one month from the date of receipt of a copy of this judgment. To enable the 1st respondent to do so, I direct the petitioner to appear before the 1st respondent at his office, at 11 a.m. on 06.01.2016. Recovery proceedings for recovery of amounts confirmed against the petitioner by Ext.P14 series of penalty orders shall be kept in abeyance, till such time as orders are passed by the 1st respondent in the rectification application as directed and communicated to the petitioner.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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