IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

WP(C).No. 38492 of 2015 (J)

PETITIONER :

MAJEESH M.R.,
PROPRIETOR, POWER ELECTRICALS AND HOME SERVICES
N.S.S.KARAYOGAM BUILDING, CHAMPAKULAM P.O.,
ALAPPUZHA DISTRICT, PIN-688505.

BY ADV. SRI.MOHAMMED RAFIQ

RESPONDENTS :
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1. THE COMMERCIAL TAX OFFICER-I
   HARIPAD, ALAPPUZHA DISTRICT, PIN-690550.

2. THE STATE OF KERALA,
   REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
   PIN-695001.

R1 & R2 BY GOVT. PLEADER SMT. K.T. LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 38492 of 2015 (J)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1 THE TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 20.09.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER UNDER RULE17(14) OF THE KVAT RULES, 2005.

EXT. P2 THE TRUE COPY OF THE REPLY DATED 17.10.2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT AGAINST PRE ASSESSMENT NOTICE ISSUED FOR THE YEAR 2013-14.

EXT. P3 THE TRUE COPY OF THE ASSESSMENT ORDER NO.32041233494/2013-14 DATED 16.11.2015 RELATING TO THE YEAR 2013-14 PASSED BY THE 1ST RESPONDENT UNDER SECTION 25(1)OF THE KERALA VALUE ADDED TAX ACT, 2003.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.38492 of 2015

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Dated this the 23rd day of December 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 order of assessment passed in relation to the petitioner, for the assessment year 2013-14. The grievance of the petitioner in the writ petition against Ext.P3 order is essentially that, although there was an offence registered against the petitioner in connection with a transportation of the goods, and the sale value that was determined by the intelligence authority was only in an amount of Rs.43,048/-, the assessing authority added an amount of Rs.10,00,000/- for probable omission and suppression, pursuant to the said offence, that was detected, and the sales turnover that was proposed for assessment was taken as Rs,10,43,048/-. It is the specific case of the petitioner that the addition of Rs.10,00,000/- was deliberately done, so as to bring the petitioner within the ambit of taxation, under the KVAT Act.

2. I have heard 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 find from Ext.P3 order that there is absolutely no basis discernible in the order for the addition of an amount of Rs.10,00,000/- for the offence that was detected in relation to the petitioner. I find force in the contention of the petitioner that the addition of Rs.10,00,000/- to the turnover detected was solely for the purpose of getting over the contention of the petitioner that he would fall below the taxable limit specified in S. 6 of the Act, for the purpose of assessment. I, therefore, quash Ext.P3 order as devoid of any reasoning and illegal, and allow the writ petition with consequential reliefs to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/