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. 38898 of 2015 (J)

PETITIONER:

M/S. MUBARAK GRANITES AGED 51 YEARS
OTHAYI (VIA) CHATHALLUR, EDAVANNA PO
MALAPPURAM DISTRICT-676 541
REPRESENTED BY ITS MANAGING PARTNER
MR.A.M.MUHAMMEDALI.

BY ADVS.SRI.K.ANAND (SR.)
SMT.LATHA ANAND
SRI.M.N.RADHAKRISHNA MENON
SRI.JOSEPH SEBASTIAN (PARACKAL)

RESPONDENTS:

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1. THE COMMISSIONER OF COMMERCIAL TAXES
   OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
   TAXES TOWERS, 8TH FLOOR, KARAMANA
   THIRUVANANTHAPURAM.

2. COMMERCIAL TAX OFFICER-I
   OFFICE OF COMMERCIAL TAX OFFICER,
   DEPARTMENT OF COMMERCIAL TAXES, MANJERI-676 121.

BY GOVERNMENT PLEADER SMT.K.T.LILLY

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

W.P.(C).NO.38898 OF 2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : COPY OF ORDER OF THE APPELLATE TRIBUNAL DATED 05.03.2004.

EXT.P2 : COPY OF CIRCULAR NO.29/2014 DATED 22.11.2014.

EXT.P3 : COPY OF DEMAND NOTICE DATED 09.10.2015 FOR THE ASSESSMENT YEAR 2012-13

EXT.P4 : COPY OF DEMAND NOTICE DATED 09.10.2015 FOR THE ASSESSMENT YEAR 2013-14

EXT.P5 : COPY OF DEMAND NOTICE DATED 09.10.2015 FOR THE ASSESSMENT YEAR 2014-15

EXT.P6 : COPY OF REPLY SUBMITTED BY THE PETITIONER TO EXT.P3 TO P5 NOTICES DATED 11.11.2015.

EXT.P7 : COPY OF REVISED ASSESSMENT ORDER DATED 30.11.2015 FOR THE ASSESSMENT YEAR 2012-13

EXT.P8 : COPY OF REVISED ASSESSMENT ORDER DATED 30.11.2015 FOR THE ASSESSMENT YEAR 2013-14.

EXT.P9 : COPY OF REVISED ASSESSMENT ORDER DATED 30.11.2015 FOR THE ASSESSMENT YEAR 2014-15

EXT.P10 : COPY OF FORM NO.12 NOTICE OF DEMAND FOR THE ASSESSMENT YEAR 2012-13

EXT.P11 : COPY OF FORM NO.12 NOTICE OF DEMAND FOR THE ASSESSMENT YEAR 2013-14

EXT.P12 : COPY OF FORM NO.12 NOTICE OF DEMAND FOR THE ASSESSMENT YEAR 2014-15

RESPONDENT'(S) EXHIBITS: NIL

// TRUE COPY//

P A TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.38898 of 2015

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Dated this the 22nd day of December 2015

<u>JUDGMENT</u>

The challenge in the writ petition is against Exts.P7 to P9 assessment orders passed in relation to the petitioner for the assessment years 2012-13, 2013-14 and 2014-15, under the Central Sales Tax Act. The grievance of the petitioner in the writ petition is essentially that while passing Ext.P7 to P9 assessment orders, the assessing authority relied on the provisions of a circular No.29/14 dated 22.11.2014 of the Commissioner of Commercial Tax, which according to the petitioner goes against the order of the appellate tribunal, which is produced as Ext.P1 in the writ petition.

2. I have heard the learned counsel for the petitioner as 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 the case of the petitioner is essentially that the circular dated 22.11.2014 does not have any application to the petitioner and further that the petitioner's case is squarely covered by Ext.P1 of the appellate

tribunal. I am of the view that these are contentions that can be taken by the petitioner in an appeal, that he can prefer against Ext.P7 to P9 assessment orders, under the CST Act. I do not find any jurisdictional error in Ext.P7 to P9 assessment orders that would warrant an interference with the said orders in these proceedings under Article 226 of the Constitution of India. Accordingly, I dismiss the writ petition in its challenge against Exts.P7 to P9 assessment orders and relegate the petitioner to his appellate remedy against Exts.P7 to P9 assessment orders under the CST Act r/w the provisions of the Kerala Value Added Tax Act. To enable the petitioner to pursue his appellate remedy against Exts.P7 to P9 assessment orders, I direct that recovery steps pursuant to Exts.P10 to P12 demand notices shall be kept in abeyance for a period of three weeks, from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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