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. 39097 of 2015 (J)

PETITIONER :

M/S. IDBI BANK LTD, PANAMPILLY NAGER, KOCHI - 36,
REPRESENTED BY SANJAY U. MANOHARAN, BRANCH MANAGER.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT :
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1. THE INTELLIGENCE OFFICER,
DEPARTEMTN OF COMMERCIAL TAXES, MATTANCHERRY
AT MINI CIVIL STATION, ALUVA - 683101.

2. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
TAXES DEPARTEMNT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.

BY GOVERNMENT PLEADER SRI. R. RANJITH

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

bp

WP(C).No. 39097 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF NOTICE ISSUED BY THE R1 DT. 11-8-2015.

P2: COPY OF REPLY FILED BY THE PETITIONER BEFORE THE R1 DT 14/9/2015.

P3: COPY OF ORDER ISSUED BY THE R1 DT 26/10/2015.

P4: COPY OF JUDGMENT IN WA NO. 1054/2011 OF THIS HON'BLE COURT DT 27/3/2015.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 39097 of 2015

Dated this the 22nd day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 oder of penalty passed in relation to the petitioner for the assessment year 2014-15 under the Kerala Value Added Tax Act, hereinafter referred to as the KVAT Act. The learned counsel for the petitioner would submit that, on receiving a proposal for imposition of penalty for non remittance of the TDS amounts in respect of works contracts awarded to the petitioner by M/s.IDBI Bank Ltd., the petitioner had, along with the reply submitted to the said proposal, also offered to pay the amount of Rs.2,60,822/- as tax under Section 10(3), which it had failed to deduct and remit in time. Counsel for the petitioner would submit that, it is without considering this offer of the petitioner to remit the amounts, that the respondents proceeded to finalise the proposal for penalty by treating the petitioner as an assessee in default.

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

3. On a consideration of the facts and circumstances of the

case as also the submissions made across the bar, I find that, while passing Ext.P3 order of penalty, the respondents did not advert to the offer made by the petitioner to remit the amount of Rs.2,60,822/-, which he had to remit by way of tax deducted at source within the time stipulated under the Act. Counsel for the petitioner submits that the petitioner was also ready and willing to pay this amount and if given an opportunity, he will pay this amount within ten days from today. Taking note of the said submission of counsel for the petitioner and finding that the offer of the petitioner was not considered by the respondents while passing Ext.P3 order, I quash Ext.P3 order and direct the petitioner to pay the amount of Rs.2,60,822/- to the respondents within ten days from the date of receipt of a copy of this judgment. I make it clear that the decision to pursue the penalty proposal against the petitioner, if any, shall be taken only after the petitioner has deposited the aforesaid amount of Rs.2,60,822/- or on his not paying the tax, within the time granted in this judgment. It is further made clear that the respondents are free to initiate penalty proceedings, if any other defect is noted in the conduct of the petitioner in the matter of payment of tax.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /22.12.15