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. 39663 OF 2015 (G)

PETITIONER(S):

SUJU MATHEW, PROPRIETOR
M/S.ESS & ESS. AGENCIES
XXIII/495 A,UNICHIRA, KOCHI 33

BY ADVS.SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM

RESPONDENT(S):

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1. THE COMMERCIAL TAX OFFICER
DEPT. OF COMMERCIAL TAXES
1ST CIRCLE, KALAMASSERY-682620

2. THE DEPUTY COMMISSIONER (APPEALS) II
DEPT. OF COMMERCIAL TAXES
ERNAKULAM 682015

3. THE DEPUTY TAHASILDAR(RR)
TALUK OFFICE
THIRUVALLA-691009

BY GOVERNMENT PLEADER SRI.R.JENCJITH

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

WP(C).NO. 39663 OF 2015 (G)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER NO.32071286204/12-13 DATED 31.12.2014

EXT.P2: TRUE COPY OF THE APPEAL AND GROUNDS

EXT.P3: TRUE COPY OF THE STAY ORDER NO.KVATA 2214 OF 2015 DATED 24.11.2015

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C).No.39663 of 2015

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Dated this the 23rd day of December, 2015

<u>J U D G M E N T</u>

The challenge in the writ petition is against Ext.P3 conditional order of stay passed in relation to the petitioner for the assessment year 2012-2013 under the Kerala Value Added Tax Act (hereinafter referred to as the KVAT Act). The grievance of the petitioner in the writ petition is essentially that while passing Ext.P3 order, the 2nd respondent did not exercise his discretion validly.

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 as also the submissions made across the Bar, I find that the issue urged in the appeal is prima facie covered in favour of the petitioner by a Division Bench judgment of this Court which held that a mere non-filing of an audit report in Form 13 and 13A cannot be a ground for reopening assessment under Section 25(1)

of the KVAT Act. Since this is one of the issue that is urged in the appeal, I quash Ext.P3 order and direct the 2nd respondent to consider and pass orders on Ext.P2 appeal within a period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner. I make it clear that recovery steps for recovery of amounts confirmed against petitioner by Ext.P1 order of assessment shall be kept in abeyance till orders are passed by the 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/23.12.15