IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 13TH DAY OF MARCH 2018 / 22ND PHALGUNA, 1939

WP(C).No. 5648 of 2018

PETITIONER(S)

M/S.YOGESH TRADING COMPANY,
KOTTACHERRY, KANHANGAD-671315, REPRESENTED BY ITS
MANAGING PARTNER, SHRI. YOGESH PRABHU.

BY ADVS.SRI.T.M.SREEDHARAN (SR.)
SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENT(S):

1. THE ASSISTANT COMMISSIONER, STATE GOODS & SERVICE TAX DEPARTMENT,
CIVIL STATION, COLLECTORATE BLOCK, SECOND FLOOR,
VIDHYANAGAR, KASARAGOD-671123.

2. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

3. THE KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL,
ADDITIONAL BENCH, PERUMANOOR, ERNAKULAM, COCHIN-682015,
REPRESENTED BY ITS ASSISTANT SECRETARY.

4. THE INTELLIGENCE OFFICER (IB)-II,
COMMERCIAL TAXES, 5TH FLOOR, TAX TOWERS, KARAMANA P.O.,
THIRUVANANTHAPURAM-695002.

R BY SR.GOVERNMENT PLEADER, SRI.V.K.SHAMSUDHEEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-03-2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 5648 of 2018 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	TRUE COPY OF THE PRE- ASSESSMENT NOTICE DATED 24.12.2017 ISSUED UNDER THE KGST ACT.
EXHIBIT P2	TRUE COPY OF THE PRE- ASSESSMENT NOTICE DATED 24.12.2017 ISSUED UNDER THE CST ACT.
EXHIBIT P3	TRUE COPY OF COMMON APPELLATE ORDER IN T. A. NOS. 80 AND 81 OF 2013 DATED 18.01.2014.
EXHIBIT P4	TRUE COPY OF THE PRE- ASSESSMENT NOTICE U/S 17 (8) OF THE KGST ACT DATED 6.03.2014.
EXHIBIT P5	REPLY DATED 25.03.2014 TO THE PRE ASSESSMENT NOTICE DATED 06.03.2014.
EXHIBIT P6	TRUE COPY OF THE JUDGMENT IN WP(C) NO. 8988/2014 DATED 9.04.2014 OF THIS HON'BLE COURT.
EXHIBIT P7	TRUE COPY OF THE JUDGMENT IN WP(C) NO. 25188/2014 DATED 15.10.2014 OF THIS HON'BLE COURT.
EXHIBIT P8	TRUE COPY OF THE JUDGMENT IN WP(C) NO. 31591/2014 DATED 15.12.2014 OF THIS HON'BLE COURT.
EXHIBIT P9	TRUE COPY OF THE REPRESENTATION DATED 4.01.2015 SUBMITTED BY THE PETITIONER.
EXHIBIT P10	TRUE COPY OF THE ENQUIRY REPORT DATED 5.03.2014.
EXHIBIT P11	TRUE COPY OF THE PRELIMINARY REPLY DATED 2.02.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P12	TRUE COPY OF THE ASSESSMENT ORDER DATED 10.5.2006 PASSED BY THE COMMERCIAL TAX AUTHORITY IN KARIKKE FOR 2002-03.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

SD/-

P.A. TO JUDGE

SKS

P.B.SURESH KUMAR, J.

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W.P.(C.) No. 5648 of 2018

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Dated this the 13th day of March, 2018

J U D G M E N T

Petitioner was a dealer under the Kerala General Sales Tax Act and Central Sales Tax Act. The assessments of the petitioner under the said statutes for the year 2002-'03 were initially completed by the competent authority treating the inter-state sales turnover of rubber sheets declared by the petitioner at their branch at Karike in the State of Karnataka as purchases effected in the State for levy of tax holding that the rubber sheets involved in the said transactions are those smuggled from the State. The petitioner though challenged the said assessment orders in appeal, the appellate authority affirmed the assessments. However, the Appellate Tribunal allowed the further appeals preferred by the petitioner challenging the orders of the appellate authority and remitted the matter for fresh consideration in terms of Ext.P3 order, after conducting an independent enquiry as regards the alleged smuggling.

2. Thereupon, when notice was issued to the petitioner for completing the assessments, the petitioner preferred Ext.P5 representation requesting the competent authority to provide them the report of the enquiry conducted in terms of the directions issued by the Appellate Tribunal and give them an opportunity to rebut the evidence, if any, collected against them, if necessary by granting them opportunity to cross examine the persons involved. Despite Ext.P5 representation, the assessments were finalised without affording the petitioner an opportunity of hearing. Consequently, this Court in terms of Ext.P7 judgment, set aside the assessment orders and directed the assessing authority to pass fresh orders. While matters were pending

before the assessing authority consequent on Ext.P7 judgment, the petitioner approached this Court again by filing W.P.(C.) No. 31591 of 2014 alleging that steps are being taken to complete the assessments without furnishing the petitioner the materials collected against them. This Court disposed of the said writ petition in terms of Ext.P8 judgment recording the submission made by the learned Government Pleader that copies of all documents which the assessing authority proposed to rely on for the purpose of completing the assessments will be served on the petitioner.

3. It is seen that notices were issued to the petitioner by the assessing authority on various occasions thereafter and all along the petitioner was contending that the directions issued by this Court in terms of Ext.P8 judgment have not been complied with by the assessing authority. Exts.P1 and P2 are the latest among the notices issued by the assessing authority for the said purpose and the said notices are under challenge in the writ petition.

4. Heard the learned counsel for the petitioner as also the learned Government Pleader.

5. In essence, the challenge against Exts.P1 and P2 notices is on the ground that the same are issued without complying with the directions issued by the Appellate Tribunal in Ext.P3 order and this Court in Ext.P8 judgment. As noted above, additions were made to the turnover of the petitioner on the ground that the interstate sales turnover disclosed by the petitioner at their branch at Karike in the State of Karnataka are in respect of rubber sheets smuggled from the State. Since it was contended by the petitioner in the appeals and second appeals preferred against the assessment orders that proper enquiry was not conducted by the competent authority before making huge additions on that ground in their turnover, the Appellate Tribunal ordered the assessing authority to pass fresh orders after conducting an independent enquiry. It is seen that later when the petitioner complained that steps are being taken to complete

assessments without providing them the copies of the materials proposed to be used against them, this Court, in terms of Ext.P8 judgment, directed the assessing authority to provide copies of all such materials. If as a matter of fact, the assessing authority has issued the impugned notices without complying the directions issued by the Tribunal in Ext.P3 order and this Court in Ext.P8 judgment, it is for the petitioner to challenge the assessment orders on that ground before the appellate authority. At every stage of the assessment process, the petitioner cannot approach this Court invoking Article 226 of the Constitution pointing out violations if any, in the directions, or infractions of the statutory provisions. If assessment orders are issued without compliance of the directions issued by the Tribunal in Ext.P3 order and this Court in Ext.P8 judgment, the same would be a ground available to the petitioner to challenge the assessment orders. It is relevant to note in this connection that the subject matter of this case pertains to the assessments of the petitioner for the year 2002-03. The materials on record indicate beyond doubt that the petitioner could successfully drag the assessment proceedings for about fifteen years by instituting one or other proceedings. This writ petition, according to me, is yet another attempt on the part of the petitioner to prolong the assessment proceedings. The writ petition, in the circumstances, is dismissed being one instituted without any bonafides.

sd/-

P.B.SURESH KUMAR
JUDGE

SKS