IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 2ND DAY OF SEPTEMBER 2016/11TH BHADRA, 1938

WP(C).No. 29268 of 2016 (G)

PETITIONER(S):

M/S.SREE AMBIKA SAW MILLS & TIMBER INDUSTRIES,
REPRESENTED BY ITS PARTNER SRI.DHEERAJLAL PREMJI PATEL,
A.M.ROAD, PERUMBAVOOR-683542,
REPRESENTED BY ITS MANAGING PARTNER.

BY ADVS.SRI.P.THOMAS GEEVERGHESE
SRI.H.RAMNATH
SRI.TONY THOMAS (INCHIPARAMBIL)

RESPONDENT(S):

1. COMMERCIAL TAX OFFICER (ENQUIRY),
MINI CIVIL STATION, ALUVA-683101.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
KERALA VALUE ADDED TAX ACT, THIRUVANANTHAPURAM-695001.

3. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER SRI.P.K.SHAMUDEEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-09-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 29268 of 2016 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	TRUE COPY OF INVOICE NO.3304 DATED 30/8/10 ISSUED BY SRI.GAYATHI TIMER INDUSTRIES
EXHIBIT P2	TRUE COPY OF THE DELIVERY NOTE NO.2020337
EXHIBIT P3	TRUE COPY OF ORDER NO.OR1834/10-11, ISSUED UNDER SECTION 47(2) OF KVAT ACT
EXHIBIT P4	TRUE COPY OF RECEIPT NO.356991 DATED 30/8/15 OF COMMERCIAL TAX DEPARTMENT MEENAKSHIPURAM CHECK POST.
EXHIBIT P5	TRUE COPY OF RECEIPT NO.356990 DATED 30/8/15 OF COMMERCIAL TAX DEPARTMENT MEENAKSHIPURAM CHECK POST
EXHIBIT P6	TRUE COPY OF STATEMENT DATED 18/12/15 FILED BY THE PETITIONER BEFORE THE R1
EXHIBIT P7	TRUE COPY OF PROCEEDINGS OF COMMERCIAL TAX OFFICER (ENQUIRY) ALUVA DATED 25/4/16.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M. SHAFFIQUE, J.

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W.P. (C) No. 29268 of 2016

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Dated this, the 2nd day of September, 2016

J U D G M E N T

Petitioner challenges Ext.P7 by which penalty order had been issued under Section 47(6) of the KVAT Act, 2003.

2. Admittedly, the order is appealable. Learned counsel for the petitioner submits that none of the objections raised by the petitioner had been considered while passing Ext.P7 order. Perusal of Ext.P7 order would show that the deficiency pointed out at the time of interception of the vehicle was that on verification of the accompanying documents, double side carbon has not been used while filling the delivery note. Accordingly, suspecting wilful attempt to evade tax, detention order was passed. Though the petitioner filed an objection controverting the same, there was nothing to indicate under what circumstances the infirmity had been caused. Ext.P7 order would show that an opportunity was given to the dealer for a hearing and he has also filed a reply in detail. The officer mentioned that he does not find any merit in it. Perusal of Ext.P6 would show that the invoice, delivery note and other connected

papers were checked at Meenakshipuram Check post by the Commercial Tax authorities and the documents were found to be in order. The use of double side carbon in Kerala is because of an amendment made to sub rule (16) of Rule 58 of KVAT Rules whereas in Tamil Nadu, there is no such rule for use of double side carbon. If the Kerala Rules prescribe a particular format, transporters/dealers are bound to comply with the same. If penalty had been imposed on that basis, I do not find any error on the part of the officer to have passed Ext.P7 order. However, if the petitioner is aggrieved, his contentions on merit requires to be considered and the remedy of the petitioner is to prefer an appeal before the competent authority.

3. In the light of the aforesaid factual situation, I do not think that this is an instance where this Court should entertain the writ petition bypassing the alternate remedy available under the statute.

Writ petition is dismissed reserving right of the petitioner to file appeal against the impugned order.

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp2/09/2016 //True Copy//

P.S to Judge