IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF JANUARY 2017/29TH POUSHA, 1938

WP(C).No. 41363 of 2016 (U)

PETITIONER(S):

M/S, MODERN HOSPITAL PHARMACY
KOOTTANAD PATTAMBI, PALAKKAD,
REPRESENTED BY ITS MANAGING PARTNER,
MRS. C. ANUPAMA.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.ARJUN S.RAJ

RESPONDENT(S):

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1. **THE COMMERCIAL TAX OFFICER**
   PATTAMBI-679306.

2. **THE INSPECTING ASSISTANT COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES,
   PALAKKAD.678001.

R1 & R2 BY SPL. GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-01-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 41363 of 2016 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE COMMON OBJECTION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR THE YEARS 2011-12 & 2012-13 DATED 28.7.2016.

EXHIBIT P2: TRUE COPY OF THE REVISED AUDIT REPORT FOR THE YEAR 2011-12 DATED 20.07.2016.

EXHIBIT P3: TRUE COPY OF THE REVISED AUDIT REPORT FOR THE YEAR 2012-13 DATED 20.7.2016.

EXHIBIT P4: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR THE YEAR 2011-12 DATED 19.8.2016.

EXHIBIT P5: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR THE YEAR 2012-13 DATED 19.8.2016.

EXHIBIT P6: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2011-12 DATED 08.11.2016.

EXHIBIT P7: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2012-13 DATED 08.11.2016.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. VINOD CHANDRAN, J.

W.P.(C) No. 41363 of 2016 (U)

Dated: 19th January, 2017

J U D G M E N T

The petitioner is aggrieved with the assessment orders passed at Exts.P4 and P5 for the years 2011-2012 and 2012-2013. The contention against the assessment orders is that the revised audit report has not been looked into by the Assessing Officer.

2. Admittedly, for the subject years, the assessee, a Pharmacy inside a hospital, filed returns disclosing the turnover which, however, did not tally with the audit report filed under Sections 13 and 13A of the Kerala Value Added Tax Act, 2003 ('KVAT Act' for short). The audit report showed sales far in excess of that shown in the return. The contention of the Pharmacy is that

the hospital charges were also included in the audit report and a revised report has been filed.

3. Though there is a provision to revise the returns filed under the KVAT Act, there is absolutely no provision where the auditor could file a revised report. Considering also the factual disputes involved, this Court is not inclined to exercise discretion to interfere with the assessment orders under Article 226 of the Constitution of India. The petitioner would be left to the remedy available before the Appellate Authority.

The writ petition is dismissed. No Costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj 19/1/17