IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 21ST DAY OF MARCH 2024 / 1ST CHAITHRA, 1946

WP(C) NO. 10859 OF 2024

PETITIONER/S:

JINNY JAISON
AGED 50 YEARS
WIFE OF JAISON T. A [PROPRITRIX, ABHILASH JEWELLERY, SRA/28, SANTHOSH STREET, THATTIL HOUSE, UNITY ROAD, KURIACHIRA P.O. THRISSUR ., PIN - 680006

BY ADVS.
SANTHOSH P.ABRAHAM
M.RAJ MOHAN

RESPONDENT/S:

1. THE STATE TAX OFFICER
KERALA GST DEPARTMENT, CHAVAKKAD, PIN - 680506
2. THE STATE TAX OFFICER
TAX PAYER SERVICES CIRCLE, NATTIKA, KERALA GST DEPARTMENT STATE TAX COMPLEX, POOTHOLE P.O. THRISSUR ., PIN - 680004
3. THE STATE TAX OFFICER (IB)
OFFICE OF THE DEPUTY COMMISSIONER (INTELLIGENCE), KERALA STATE GOODS & SERVICE TAX DEPARTMENT STATE TAX COMPLEX, POOTHOLE P.O. THRISSUR ., PIN - 680004
4. JOINT COMMISSIONER OF STATE TAX
KERALA STATE GOODS &SERVICE TAX DEPARTMENT, STATE TAX COMPLEX, POOTHOLE P.O, THRISSUR, PIN - 680004

OTHER PRESENT:

SMT. JASMIN M.M. - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 21st day of March, 2024

The petitioner was an assessee under the provisions of Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act'). The petitioner has been dealing in jewellery business. During the financial year 2022-2023, as per the averments made in the writ petition, the petitioner participated in the auction sale of gold ornaments conducted by the financier M/s. Manappuram Finance Ltd. The petitioner was issued a notice under Section 25(1) of the KVAT Act, on allegation that on verification of the data available with the department certain sales and purchases were not found accounted by the petitioner. The assessment order in pursuance to the notice issued under Section 25(1) of the KVAT Act was completed on 30.07.2016 as evidenced in Ext.P1.

2. The petitioner aggrieved by the said assessment order filed an appeal before the Deputy Commissioner. The appellate authority dismissed the appeal vide order dated 15.12.2017 in Ext.P4. Aggrieved by the said dismissal of the appeal by the first appellate authority, the petitioner approached the Tribunal. The Tribunal vide order dated 25.11.2022 allowed the appeal and remanded the matter back to the assessing authority to pass fresh

assessment order.

3.While the appeal was pending before the Tribunal, the intelligence wing of the State Goods and Services Tax Department initiated proceedings against the seller for suppression of turn over and non payment of tax. The seller produced the copies of the sale bills issued to the petitioner during the year 2012-2013. Petitioner was issued notice and the petitioner filed replies to the said notice issued by the intelligence wing of the State Goods and Services Tax Department.

4.After considering the replies of the petitioner to the notices issued by the assessing authority on the inputs given by the intelligence wing of the Kerala State Goods and Services Tax Department, a revised notice was issued to the petitioner on 01.08.2023. The petitioner replied to the said notice explaining the defects pointed out and requested to consider the documents issued by the State Tax Officer. However, the 2nd respondent passed an order dated 05.12.2023, demanding input tax on the differential turn over. The said order is under challenge before this court.

5.Admittedly, there is a remedy of appeal under Section 55 of the KVAT Act before the appellate authority against the said order. This court does not find that the order suffers from jurisdictional error or violation of principle of natural justice or there is an error apparent on the face of record.

In view thereof, the writ petition is dismissed on the ground of availability of alternative remedy, leaving it open to the petitioner to approach the appellate authority, if he is so advised.

Sd/-
DINESH KUMAR SINGH
JUDGE

SJ

APPENDIX OF WP(C) 10859/2024

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF ASSESSMENT ORDER NO.32081163096/2012-13 DATED 30-7-2016 ISSUED BY 1 ST RESPONDENT
EXHIBIT P2	TRUE COPY OF THE INVOICE NO.00590-KL/2012-13 DATED 8-11-2012 ISSUED BY MANAPPURAM FINANCE LTD.
EXHIBIT P2(A)	TRUE COPY OF THE INVOICE NO.00624-KL/2012-13 DATED 20-11-2012 ISSUED BY MANAPPURAM FINANCE LTD
EXHIBIT P2(B)	TRUE COPY OF THE INVOICE NO.00592-KL/2012-13 DATED 09-11-2012 ISSUED BY MANAPPURAM FINANCE LTD
EXHIBIT P2(C)	TRUE COPY OF THE INVOICE NO.00593-KL/2012-13 DATED 10-11-2012 ISSUED BY MANAPPURAM FINANCE LTD.
EXHIBIT P2(D)	TRUE COPY OF THE INVOICE NO.00497-KL/2012-13 DATED 22-09-2012 ISSUED BY MANAPPURAM FINANCE LTD
EXHIBIT P3	TRUE COPY OF THE STATEMENT OF ACCOUNTS PERTAINING TO A/C.NO.0326053000011788 FOR THE PERIOD FROM 8-06-2010 TO 31-3-2013 ISSUED BY SOUTH INDIAN BANK, NATTIKA BRANCH
EXHIBIT P4	TRUE COPY OF THE APPEAL ORDER KVAT 701/16 DATED 15-12-2017 ISSUED BY THE DEPUTY COMMISSIONER (APPEALS), STATE GST DEPARTMENT, THRISSUR
EXHIBIT P5	TRUE COPY OF THE ASSESSMENT ORDER NO.32081163096/2012-13 DATED 25-7-2019 ISSUED BY 1 ST RESPONDENT
EXHIBIT P6	THE FIRST APPELLATE AUTHORITY ALLOWED THE APPEAL CONDITIONALLY. TRUE COPY OF THE APPEAL ORDER KVAT NO.497/19 DATED 13-5-2020 BY THE JOINT COMMISSIONER (APPEALS), STATE GST DEPARTMENT; THRISSUR
EXHIBIT P7	TRUE COPY OF THE COMMUNICATION NO.IBC-29/2016-17 DATED 09-06-2022 BY THE 3 RD RESPONDENT WITH COPIES OF THE BILLS
EXHIBIT P8	TRUE COPY OF THE NOTICE NO.32081163096/2012-13 DATED 21-05-2022
EXHIBIT P9	TRUE COPY OF THE REPLY DATED 15-06-2022

	SUBMITTED BY THE PETITIONER BEFORE THE 1 ST RESPONDENT
EXHIBIT P10	TRUE COPY OF THE ORDER TA (VAT) NO.826/2018 & 827/2018 DATED 25-11-2022 ISSUED BY THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM
EXHIBIT P11	TRUE COPY OF THE REVISED NOTICE NO.32081163096/2012-13 DATED 01-08-2023 ISSUED BY THE 2 ND RESPONDENT
EXHIBIT P12	TRUE COPY OF THE REPLY DATED 17-08-2023 SUBMITTED BY THE PETITIONER
EXHIBIT P13	TRUE COPY OF THE ORDER NO.32081163096/2012-13 DATED 5-12-2023 ISSUED BY THE 2 ND RESPONDENT
EXHIBIT P14	TRUE COPY OF THE ORDER NO.32081163096/2012-13 DATED 15-02-2024 ISSUED BY THE 2 ND RESPONDENT