IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 4TH DAY OF MARCH 2024 / 14TH PHALGUNA, 1945

WA NO. 322 OF 2024

AGAINST THE JUDGMENT DATED 18.1.2024 IN WP(C) NO.9011 OF 2023 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

AJI THOMAS, AGED 46 YEARS
M/S. BLUE SEVEN STAR CONSTRUCTION, PROPRIETOR,
4/804-A, KOTTIYAM, KOLLAM, PIN - 691571

BY ADVS.S.ANIL KUMAR (TRIVANDRUM)
SABU C.J
RAHUL A.

RESPONDENTS/RESPONDENTS:

1. THE STATE TAX OFFICER,
WORKS CONTRACT, STATE GOODS AND SERVICE TAX DEPARTMENT, BAPUJI NAGAR, ASHRAM, KOLLAM, PIN - 691002

2. COMMISSIONER OF STATE GOODS AND SERVICE TAX DEPARTMENT,GOVERNMENT OF KERALA, TAX TOWER, KILLIPALAM, KARAMANA P.O, THIRUVANANTHAPURAM, PIN - 695002

3 **STATE OF KERALA, REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, GOVERNMENT SECRETARIATE, TRIVANDRUM, 695001, PIN - 695001**

SR.GP-SRI. V.K.SHAMSUDHEEN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 4th day of March, 2024

Dr. Kauser Edappagath, J.

The appellant is the petitioner in WP(C) No.9011/2023 which was filed challenging Ext.P5 order passed by the 1st respondent under the provisions of the KVAT Act. The learned Single Judge dismissed the writ petition holding that the appellant may avail any other statutory remedy as may be available under law. It is challenging the said judgment; the appellant is before us.

2. We have heard Sri. S. Anil Kumar, the learned counsel for the appellant and Sri. V.K. Shamsudheen, the learned Senior Government Pleader.

3. The appellant is the proprietor of M/s. Blue Seven Star Constructions Private Limited which is engaged in undertaking labour construction contract work. According to the appellant, since there was not much work, and even the meager work done did not involve the supply of materials, there was no necessity to

take registration under the KVAT Act. The appellant was also the managing partner of a private limited company M/s Blue Seven Star Construction Private Limited engaged in the labour contract work in construction business. The wife of the appellant was another Director of the said company. It has GST registration. The grievance of the appellant is that Ext.P5 assessment order for the year 2016-17 was passed by the 1st respondent erroneously saddling him with huge liability relying on the income tax return and profit and loss statement of M/s Blue Seven Star Constructions Private Limited. The records would show that before passing the impugned order, the intelligence officer of commercial taxes after conducting enquiry under Section 47(6) of the KVAT Act found that the proprietorship concern of the appellant had suppressed a total turn over and had evaded the payment of tax. The appellant was issued a notice in Form 17 under Section 25(1) of the KVAT Act. Despite service of notice, the appellant did not produce the books of account, nor did he file any reply. Thereafter, the assessment under section 25(1) of the KVAT Act was proposed and the copy of the order was given to the appellant for filing objection, if any. An opportunity of hearing was also given to him. He did not file any reply or avail himself of the opportunity to hear. Thus, the impugned order was passed after complying with the statutory formalities. The question whether the 1st respondent fixed the turnover of the appellant's proprietorship concern by relying on the income tax return and profit and loss statement of M/s Blue Seven Star Constructions Private Limited of which he was only a managing partner is a disputed question of fact which cannot be adjudicated in a writ petition. Even though Ext.P5 order was passed way back in 29/2/2020, the appellant so far has not preferred any appeal against the said order.

We find no merit in the appeal and accordingly it is dismissed.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR

JUDGE

sd/-

DR. KAUSER EDAPPAGATH

JUDGE

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APPENDIX OF WA 322/2024

PETITIONER ANNEXURES

Annexure A1	**A COPY OF THE NOTICE DATED 17-12-2016 ISSUED BY THE INTELLIGENCE INSPECTOR, COMMERCIAL TAXES, SQUAD NO.1, KOLLAM UNDER SECTION 47(2) OF THE KVAT ACT**
Annexure A2	**A COPY OF THE RECEIPT DATED 17-12-2016 ISSUED BY THE INTELLIGENCE INSPECTOR FOR THE SECURITY DEPOSIT AMOUNTING TO RS.5, 800/- DEMANDED AS PER ANNEXURE-A1**