IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WA.No. 2185 of 2015 () IN WP(C).28274/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 28274/2015 of HIGH COURT OF KERALA DATED 28.9.2015

APPELLANT(S)/PETITIONER:

M/S. JMASSH DOORS & WINDOWS PRIVATE LIMITED,
DOOR NO.14/526, EZHAKKAD, MUNDUR,
PALAKKAD DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR, SREEKANTH.K.G.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENTS/RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER,
   2ND CIRCLE, PALAKKAD-678001.

2. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R BY SMT.SOBHA ANNAMMA EAPEN, SENIOR GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

W.A.No.2185 of 2015

Dated this the 13th day of October, 2015

<u>J U D G M E N T</u>

<u>Thottathil B.Radhakrishnan, J</u>.

1. This writ appeal is by an assessee under the Kerala Value Added Tax Act. We have heard the learned counsel for the appellant and the learned Government Pleader.

2. The assessee challenged Exhibit P8 assessment order on the plea that it is issued in violation of principles of natural justice in as much as the assessee did not have an appropriate opportunity to avail the pre-decisional hearing extended through an earlier notice. The learned single Judge has taken the view that the fact that notice was issued and a reply was made without producing the necessary papers is sufficient enough to overrule such contention and thereby refused to entertain a challenge in writ jurisdiction against the assessment order.

3. Hearing the learned counsel for the assessee and the learned

senior Government Pleader for the Department of Taxes, we thought it appropriate to look into the assessment order as well. Having bestowed our anxious consideration to the facts and figures and the procedure carried before the Commercial Tax Officer, we think that ends of justice would be satisfied, if the impugned Exhibit P8 is set aside and the Commercial Tax Officer decides the assessment proceedings afresh on condition that the appellant/assesse remits an amount of ₹10,00,000/- (Rupees ten lakhs only) within a period of three weeks. Such remittance will be accounted as against total accruals in terms of any fresh assessment order as may be issued pursuant to this judgment. To pave way for this, we vacate the impugned judgment and direct as aforesaid. The appellant is directed to mark appearance before the Commercial Tax Officer concerned on 20.10.2015.

Writ appeal ordered accordingly.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG/13.10.15