IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 20 of 2015 (B)

PETITIONER(S):

SIJO AGENCIES,
K.J.THOMAS - PROPRIETOR, ITHIPUZHA,
VAIKOM, REPRESENTED BY ITS PROPRIETOR SHRI.K.J.THOMAS.

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMT.G.MINI
SRI.P.S.SREE PRASAD

RESPONDENT(S):

THE COMMERCIAL TAX OFFICER-1,
VAIKOM - 686 612.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 20 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: A TRUE COPY OF THE NOTICE DATED 15.11.2014.

EXT.P-2: TRUE COPY OF THE ORDER DATED 5.12.2014.

EXT.P-3: TRUE COPY OF THE RECTIFICATION APPLICATION SUBMITTED ON 19.12.2014.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) No.20 of 2015 (B)

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Dated this the 5th day of January, 2015

JUDGMENT

The petitioner is engaged in trading of cement and is a registered dealer under the Kerala Value Added Tax Act, 2003 [for short, 'the Act']. The writ petition is filed in respect of assessment year 2013 - 2014 where, pursuant to a notice issued under Section 25(1) of the Act on 15.11.2014, the respondent proceeded to pass Ext.P2 order of assessment on 05.12.2014.

2. The case of the petitioner in the writ petition is that, he did not have sufficient time to prefer any effective reply to the notice that was served on him on 15.11.2014 and therefore, the respondent proceeded to pass Ext.P2 order of assessment on best judgment basis without considering any of the contentions of the petitioner.

3. I have heard the learned Government Pleader, who would rely on Ext.P2 order passed by the respondent to point out that the respondent was constrained to pass the order in the absence of any reply from the petitioner.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that, in as much as there was no pressing urgency for the respondent to pass Ext.P2 order on 05.12.2014. In the

notice issued to the petitioner on 15.11.2014, the petitioner was asked to appear for the hearing on 21.11.2014. The said direction in the notice virtually forced the petitioner to submit a reply to the notice within a period, which was less than what was contemplated under the Statute. This action of the respondent is clearly illegal and therefore, cannot be legally sustained. Accordingly, I quash Ext.P2 order of assessment passed by the respondent and direct him to consider the matter afresh, after taking into account the contentions of the petitioner in the reply to be furnished by the petitioner, to the notice issued to him under Section 25 (1) of the Act. The petitioner shall file his reply to the notice within a week from the date of receipt of a copy of this judgment. The respondent shall thereafter, proceed to pass a fresh order of assessment for the assessment year 2013 - 2014, within a period of three months, after affording an opportunity of hearing to the petitioner.

The writ petition is disposed of as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/06/01/