IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 677 of 2015 (H)

PETITIONER(S):
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1. M/S.MARIKAR IMPORT AND EXPORT,
REP.BY ITS PARTNER HABEEB MARAKAR, DENSONS BUILDING, 60/A7, EDAPPALLY TOLL, KALAMASSERY, 1 (NEW), 4 (OLD) THRIKKAKARA, EDAPPALLY, PIN-682024.

2. HABEEB MARIKAR, PARTNER,
M/S.MARIKAR IMPORT & EXPORT, MARAKAR MANZIL, BAGYATHARA LANE, MAMANGALAM, POTTAKUZHI ROAD, COCHIN-25.

3. SHAHUL HAMEED MARIKAR, PARTNER,
M/S.MARIKAR IMPORT & EXPORT, MARAKAR MANZIL, BAGYATHARA LANE, MAMANGALAM, POTTAKUZHI ROAD, COCHIN-25.

BY ADVS.SRI.S.SAJU
SRI.P.M.SHAMEER

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER, KVAT CIRCLE - I,
KALAMASSERY, KAKKANAD.

2. DEPUTY TAHSILDAR (RR), KANAYANNUR TALUK,
ERNAKULAM, KOCHI-682011.

3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO COMMERCIAL TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

BY SENIOR GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 677 of 2015 (H)

APPENDIX

PETITIONERS' EXHIBITS

P1: COPY OF CERTIFICATE REGISTRATION ISSUED BY THE COMMERCIAL TAX OFFICER, DEPARTMENT OF COMMERCIAL TAXES, GOVERNMENT OF KERALA, DATED 13/7/11

P2: COPY OF INVICE AGAINST THE PURCHASE OF DEWATERING PUMP FROM M/S.VEGO TECHNOLOGIES FROM COIMBATORE DT.5//7/11

P3: COPY OF MONTHLY RETURN FOR THE PERIOD JULY 2011 WITH ACKNOWLEDGMENT RECEIPT DATED 23/9/11

P4: COPIES OF THE REVENUE RECOVERY NOTICES DATED 6/11/14 ISSUED BY THE R2 TO THE PETITIONER ON 23/12/14

P5: COPY OF THE PROCEEDINGS OF THE COMMERCIAL TAX OFFICER, 1ST CIRCLE, KALAMASSERY IN ORDER NO.32071219907/1-12 DATED 10/9/14

P6: COPY OF THE PROCEEDINGS OF THE COMMERCIAL TAX OFFICER 1ST CIRCLE, KALAMASSERY ORDER NO.32071296126/12-13 DATED 11/9/14

P7: COPY OF THE FINAL ASSESSMENT ORDER OF THE COMMERCIAL TAX OFFICER, 1ST CIRCLE, KALAMASSERY DATED 16/10/14

P7(A): COPY OF THE NOTICE OF DEMAND DATED 5/12/14

P8: COPY OF THE CERTIFICATE OF ORIGIN CERTIFIED BY THE INDIAN CHAMBER OF COMMERCE AND INDUSTRY, COIMBATORE DATED 18/7/11

P9: COPY OF THE BILL OF LADING DATED 14/7/11

P10: COPY OF THE LETTER OF CREDIT DATED 6/7/11.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.677 of 2015 (H)

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Dated this the 14th day of January, 2015

JUDGMENT

The first petitioner, a partnership firm, is registered as a dealer under the provisions of the Kerala Value Added Tax Act, 2003 and the Central Sales Tax Act. The second and third petitioners are the partners of the first petitioner firm. In the writ petition, Ext.P7 assessment order under the KVAT Act, for the assessment year 2011 - 2012, is impugned, inter alia, on the ground that, before passing the said order, the petitioner was not heard. The petitioner points to the dates shown in Ext.P7 order to contend that, the notice dated 11.09.2014 that was sent to the petitioner specified that the hearing would also be conducted on 11.09.2014 itself. It is the case of the petitioner, therefore, that even going by the contents of the notice dated 11.09.2014 issued to him, it was apparent that there was no opportunity of hearing given to the petitioner.

2. I have heard Sri.Saju S. Nair, learned counsel appearing for the petitioners and Smt.Sobha Annamma Eappen, learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that Ext.P7 order

refers to a notice dated 11.09.2014 that was sent to the petitioner prior to the passing of the order. While the contents of the notice are re-produced in Ext.P7 order, the same would show that the opportunity of hearing was also afforded on 11.09.2014 ie. the date of issuance of the notice.

4. The learned Government Pleader, on instructions would submits that the said date in the notice was entered by a mistake and actually the petitioner was given seven days time, as noted in the said notice itself, for filing the objections to the notice. I find, however, that there was no effective consideration on merits, of any reply filed by the petitioner, before passing Ext.P7 order. That apart, it is also not in dispute that the petitioner was not heard prior to the passing of the order. The assessment was completed on best judgment basis. In the writ petition, the petitioner has produced various documents to substantiate his contention that the tax liability shown in Ext.P7 is grossly exaggerated. On a consideration of the said documents, I am of the view that the petitioner must be given an effective opportunity to substantiate his contentions, with regard to the assessment to be done in respect of the assessment year 2011-2012, before the assessing authority. Accordingly, I quash Ext.P7 order and direct the first respondent assessing authority to re-consider the matter, after affording an opportunity of

hearing to the petitioners. Inasmuch as, there was a dispute in this case with regard to the service of notice on the petitioner, and with regard to the address at which the notice was to be served, I make it clear that the petitioner shall present himself at the office of the first respondent, at 11 a.m. on 23.01.2015 with all necessary documents, as also any additional objections that he proposes to file before the assessing officer, so as to substantiate his contentions on merits. The first respondent shall hear the petitioner on the said date and proceed to pass orders in the matter within a period of two months thereafter.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/14/01/