IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 2219 of 2015 (B)

PETITIONER(S):

MATHEW CYRIAC,
PROPRIETOR,
CHENNOTH GLASSES & HARDWARES,
THALAYOLAPARAMBU, KOTTAYAM, PIN - 686 605.

BY ADVS.SRI.MOHAMMED RAFIQ
SRI.M.G.SHAJI.

RESPONDENT(S):

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1. THE INTELLIGENCE OFFICER,
   COMMERCIAL TAXES, SQUAD NO.V,
   KOTTAYAM-686 002.

2. THE STATE OF KERALA,
   REPRESENTED BY THE SECRETARY
   COMMERCIAL TAXES DEPARTMENT,
   TRIVANDRUM, PIN 695 001.

BY SENIOR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT-P1: THE TRUE COPY OF THE LETTER DATED 20.03.2012 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT-P2: THE TRUE COPY OF THE NOTICE UNDER SECTION 67(1) BEARING NO.ISK-IV CR 20/2010-2011, RELATING TO THE ASSESSMENT YEAR 2009-10 DATED 04.10.2014 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P3: THE TRUE COPY OF THE NOTICE UNDER SECTION 67(1), BEARING NO.ISK-IV CR 20/2010-2011, RELATING TO THE ASSESSMENT YEAR 2010-11, DATED 04.10.2014 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P4: THE TRUE COPY OF THE REPLY DATED 10.11.2014 SENT THROUGH E-MAIL BY THE PETITIONER TO THE 1ST RESPONDENT..

EXHIBIT-P5: THE TRUE COPY OF THE PRINT OUT OF LIST OF EMAILS SENT BY PETITIONER FROM 08.11.2014 TO 13.11.2014 THOUGH HISE GOOGLE ACCOUNT.

EXHIBIT-P6: THE TRUE COPY OF THE ORDER NO.ISK-IV-CR 20/2010-11 RELATING TO THE ASSESSMENT YEAR 2009-10 DATED 28.11.2014 PASSED BY THE 1ST RESPONDENT.

EXHIBIT-P7: THE TRUE COPY OF THE ORDER NO.ISK-IV-CR 20/2010-11 RELATING TO THE ASSESSMENT YEAR 2010-11 DATED 28.11.2014 PASSED BY THE 1ST RESPONDENT.

EXHIBIT-P8: THE TRUE COPY OF THE PRINT OUT OF THE GOOGLE MAIL PAGE SHOWING MAIL DELIVERY FAILURE REPORT OF MAIL SENT BY THE PETITIONER TO THE 1ST RESPONDENT ON 11.11.2014.

EXHIBIT-P9: THE TRUE COPY OF THE SPEED POST RECEIPT BEARING NUMBER EL 491434977 IN DATED 24.12.2014 EVIDENCING DESPATCH OF EXT.P4 TO THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 2219 of 2015

Dated this the 10th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P6 and P7 orders of penalty, in relation to the petitioner for the assessment years 2009-2010 and 2010-2011 under the Kerala Value Added Tax Act (hereinafter referred to as 'KVAT Act'). The sole ground on which Exts.P6 and P7 are impugned in the writ petition is that, the petitioner was not heard prior to the passing of the said orders and further, that the reply submitted by the petitioner was not considered by the 1st respondent while passing the said orders. It is the contention of the petitioner in the writ petition that, Exts.P6 and P7 orders are, therefore, vitiated by a non compliance with the rules of natural justice.

2. I have heard Sri.Mohammed Rafiq, the learned counsel for the petitioner as also Smt.Sobha Annamma Eappen, the 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 it is the specific case of the petitioner that he had submitted to a reply to

the notice received by him proposing penalty, by e-mail, but it was found that the mail address was wrongly entered and therefore, the said reply did not reach the 1st respondent. It is stated that he thereafter, sent a hard copy of the reply to the 1st respondent, but that was received in the office of the 1st respondent after the date of the order passed against him. It is pointed out that, it was this lapse on the part of the petitioner, that resulted in the 1st respondent passing orders without hearing the petitioner. The petitioner only seeks an opportunity of being heard before passing orders confirming a penalty on him.

4. In the statement filed on behalf of the 1st respondent, there is no reference to any e-mail received from the petitioner. It is stated, however, that the hard copy of the reply filed by the petitioner was received only after the date of the order of the 1st respondent, since it was sent by the petitioner only after the date of Exts.P6 and P7 orders.

5. Taking note of the overall facts and circumstances, I am of the view that the petitioner can be afforded another opportunity of appearing before the 1st respondent and presenting

his case.

6. Under such circumstances, I quash Exts.P6 and P7, and direct the 1st respondent to complete the penalty proceedings in relation to the petitioner, for the assessment years 2009-2010 and 2010-2011 under the KVAT Act afresh, after hearing the petitioner. To enable the 1st respondent to do this, I direct the petitioner to appear before the 1st respondent at his office at 11 AM on 27.03.2015. The petitioner is free to rely on any material to substantiate his contentions on merit at the time of hearing before the 1st respondent.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das