

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

W.P.(C).No. 2644 of 2015 (E)

PETITIONER :

**TEJ RAJ SHARMA, AGED 50 YEARS
PROPRIETOR, JYOTHI TEXTILES, DOOR NO.26
DD BAZAR, GOPALAPRABHU ROAD, ERNAKULAM.**

**BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM**

RESPONDENTS :

- 1. THE STATE OF KERALA
REPRESENTED BY ITS COMMISSIONER TO
DEPARTMENT OF COMMERCIAL TAXES,
SECRETARIAT, THIRUVANANTHAPURAM.
PIN : 695 001**
- 2. THE COMMERCIAL TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES,
3RD CIRCLE, ERNAKULAM.
PIN : 682 017**
- 3. THE INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM, PIN 682 030.**

R1 TO R3 BY GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 2644 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1 : TRUE COPY OF THE NOTICE DATED 5.7.2014 ISSUED BY THE
2ND RESPONDENT UNDER SECTION 25(1) OF THE KVAT ACT
2003.**
- EXHIBIT-P2 : TRUE COPY OF THE OBJECTION DATED 28.8.2014 SUBMITTED
BY THE PETITIONER TO THE EXT.P1 NOTICE.**
- EXHIBIT-P2(A) : TRUE COPY OF THE PURCHASE LIST.**
- EXHIBIT-P3 : TRUE COPY OF THE ORDER NO.32071790125/11-12 DATED
3.9.2014 ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT-P4 : TRUE COPY OF THE DEMAND NOTICE DATED 22.12.2014
ISSUED BY THE 3RD RESPONDENT UNDER SECTION 11 OF
THE KERALA REVENUE RECOVERY ACT.**

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 2644 of 2015 (E)

.....
Dated this the 28th day of January, 2015

JUDGMENT

The challenge in the writ petition is as against Ext.P3 assessment order passed for the assessment year 2011 - 2012. The contention of the petitioner is that, although he had filed Ext.P2 reply, to the notice issued to him under section 25(1) of the KVAT Act, and the same was acknowledged by the office of the second respondent, in Ext.P3 order that was passed subsequently, there was no reference to Ext.P2 objection filed by the petitioner and further, the said order has been passed by observing that the petitioner did not file any objection till the date of the order. It is also contended that Ext.P3 order was passed without hearing the petitioner.

2.I have heard Sri.Ziyad Rahman, learned counsel for the petitioner and Smt.Sobha Annamma Eappen, learned Government Pleader of the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, in Ext.P2 reply filed by the petitioner to the notice issued to him by the second respondent, there is a signature and a seal, acknowledging the receipt of Ext.P2 by the office of the second respondent. In that

view of the matter, it was incumbent upon the second respondent to consider Ext.P2 reply, while passing orders of assessment. In Ext.P3 order passed by the second respondent, it is stated that the dealer has not filed any objection. That is not factually correct, since Ext.P2 itself shows that the reply of the dealer was received by the second respondent. That apart, Ext.P3 order does not refer to any hearing afforded to the petitioner. This vitiates Ext.P3 order on the ground of violation of the rules of natural justice. Thus, in any view of the matter, Ext.P3 order cannot be legally sustained. Accordingly, I quash Exts.P3 order and P4 demand notice, and direct the second respondent to consider the matter afresh, after taking into account of Ext.P2 reply filed by the petitioner, and also affording an opportunity of hearing to the petitioner in the matter. The second respondent shall pass fresh orders, as directed, within a period of two months from the date of receipt of a copy of this judgment. To enable the second respondent to do so, I direct the petitioner to appear before the second respondent at 11 a.m. on 04.02.2015.

sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/28/01/