IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 2962 of 2015 (U)

PETITIONER(S):

N.DIVAKARAN,
M/S. AGASTIACODE RUBBERS, AGASTHIACODE, ANCHAL P.O.,
KOLLAM DISTRICT.

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

RESPONDENT(S):

1. **ASST.COMMISSIONER (ASSESSMENT),**
   COMMERCIAL TAXES SPECIAL CIRCLE,
   KOTTARAKKARA - 691 101.

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

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 2962 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.

EXT.P2: COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.

EXT P3: COPY OF RETURN FILED BY THE PETITIONER.

EXT.P4: COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No.2962 of 2015 (U)

...

Dated this the 30th day of January, 2015

<u>JUDGMENT</u>

The challenge in the writ petition is against Ext.P4 assessment order passed under the Kerala Value Added Tax Act, 2003 for the period from 01.08.2014 to 31.08.2014.

2. The contention of the petitioner in the writ petition is that, Ext.P4 order was passed without hearing him and without taking into account the fact that, although the proposal was to complete the assessment on best judgment basis since the petitioner had not filed the return for the period in question, the petitioner had on receipt of Ext.P2 notice proposing the assessment on best judgment basis, promptly taken steps to file the returns before the respondent authorities. It is the contention of the petitioner that, Ext.P4 order was passed without noticing this fact, and hence ought to be set aside.

3. I have heard Sri.Harisankar V. Menon, learned counsel for the petitioner and Smt.Sobha Annamma Eappen, learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that although the petitioner had received Ext.P2 notice dated 06.11.2014 and, taking note of the contents therein, taken steps to file the necessary returns for the period in question before the authorities concerned, the petitioner did not file any reply before the 1st respondent in response to Ext.P2 notice. Under these circumstances, I do not think the 1st respondent can be found fault with for having proceeded with the assessment and passed Ext.P4 assessment order, without hearing the petitioner. In my view the remedy of the petitioner against Ext.P4 lies in an appeal to be filed before the appellate authority under the KVAT Act. Thus, relegating the petitioner to the alternate remedy under the KVAT Act, the present writ petition, in its challenge against Ext.P4, is dismissed as not maintainable.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/31/01/