IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

WP(C).NO. 3432 OF 2015 (D)

PETITIONER(S):

M/S.NATIONAL PAINTS FACTORIES (INDIA) PVT. LTD.
38/2392 C, SALIM CHAMBERS, SALIM RAJAN ROAD
KOCHI-17, REPRESENTED BY ITS MANAGING DIRECTOR

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.C.S.SULEKHA BEEVI
SMT.ROSIE ATHULYA JOSEPH
KUM.SOUMYA PRAKASH
SMT.MANEESHA KUMAR

RESPONDENT(S):

1. THE ASSISTANT COMMISSIONER (ASSESSMENT)
SPECIAL CIRCLE-3, ERNAKULAM 682015

2. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY TAXES
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 3432 OF 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:TRUE COPY OF THE NOTICE DATED 14.10.2014 ISSUED BY THE 1ST RESPONDENT

P2:TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT

P3:TRUE COPY OF THE ORDER DATED 28.12.2014 TO THE PETITIONER BY THE 1ST RESPONDENT

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.3432 of 2015

....

Dated this the 3rd day of February, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P3 order passed by the 1st respondent under the Kerala Value Added Tax Act for the assessment year 2012-2013. The contention of the petitioner in the writ petition is that, while pursuant to Ext.P1 notice issued to him, he had preferred Ext.P2 reply referring to various objections that were pointed out in Ext.P1 notice, none of the points urged in the reply has been considered by the 1st respondent while passing Ext.P3 order and, besides, the petitioner was not heard prior to passing the said order. It is under these circumstances, that Ext.P3 order of the 1st respondent is impugned in the present writ petition.

2. I have heard Sri.Anil D.Nair, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P3 order, the 1st respondent does not refer to any of the objections of the petitioner in Ext.P2 reply, and further, has not

afforded the petitioner an opportunity of being heard prior to passing the assessment order. Under the circumstances, I am left with no other option but to quash Ext.P3 order in as much as it reflects a total non-application of mind by the 1st respondent while passing the said order. Ext.P3 order is also vitiated on account of non-compliance with the rules of natural justice. I, therefore, quash Ext.P3 order and direct the 1st respondent to reconsider the matter, after affording the petitioner an opportunity of being heard, within a period of two months from the date of receipt a copy of this judgment. While passing fresh orders, as directed in this judgment, the 1st respondent shall take note of the fact that he/she is discharging an important function while passing an assessment order and the same cannot be done in a mechanical manner. He shall necessarily advert to the objections filed by the assessee to the pre-assessment notice that was served on him. The order to be passed by the 1st respondent shall contain reasons to support the findings arrived at therein. The 1st respondent shall also refer to the contentions of the petitioner at the time of hearing while passing fresh orders as directed above.

Writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/