IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 3642 of 2015 (E)

PETITIONER :

M/S.MITHRA AGRICULTURAL PRODUCER COMPANY LTD.,
'AKSHARA MANDIRAM', 3RD FLOOR, MARINE DRIVE,
ERNAKULAM, COCHIN-682 011, REPRESENTED BY ITS CHAIRMAN,
SRI.ANSON K MALIAKKAL.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, 3RD CIRCLE, ERNAKULAM,
   COCHIN-682 018

2. STATE OF KERALA,
   REPRESENTED BY SECRETARY TO TAXES DEPARTMENT,
   SECRETARIAT, THIRUVAANTHAPURAM-695 001

R1 & R2 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.3642/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ANNUAL REVISED RETURN FOR THE YEAR 2012-13 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P2 COPY OF THE PRE-ASSESSMENT NOTICE NO. DATED 11/12/2014 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT, PROPOSING TO COMPLETE BEST JUDGMENT ASSESSMENT FOR THE SOLE REASON OF NON-FILING OF AUDIT REPORT IN FORM 13 AND 13A FOR 2012-13, AFTER ADDING 25% OF CONCEDED TURNOVER.

P3 COPY OF THE RELEVANT PAGES OF ONLINE AUDITED FINANCIAL STATEMENT DATED 01/01/2015 IN FORM NO.13 & 13A FOR THE YEAR 2012-13, SUBMITTED BY THE PETITIONER AND WHICH WAS MADE AVAILABLE BEFORE 1ST RESPONDENT.

P4 COPY OF THE REPLY DATED 01/01/2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT AGAINST EXT P2 NOTICE, ALONG WITH EXT P3 AUDIT REPORT FOR 2012-13.

P5 COPY OF THE ASSESSMENT ORDER DATED 31/12/2014, U/S. 25(1) ISSUED TO THE PETITIONER ON 23/01/2015 FOR THE YEAR 2012-13, WHICH IS AFTER E-FILING OF EXT.P3 AUDIT REPORT AND OF FILING EXT.P4 REPLY

P6 COPY OF THE JUDGMENT DATED 25/09/2014 PASSED BY THE DIVISION BENCH OF THIS HON'BLE COURT IN OT REVISION NO.49 OF 2014 IN A SQUARELY APPLICABLE SET OF FACT, WHEREIN IT WAS HELD THAT, ASSESSING AUTHORITY HAD NO JURISDICTION TO COMPLETE ASSESSMENT U/S. 25(1) EVEN IN A CASE OF NON FILING OF AUDIT REPORT.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 3642 of 2015 (E)

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Dated this the 5th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 assessment order of the 1st respondent passed pursuant to a notice issued under Section 25(1) of the Kerala Value Added Tax Act, 2003.

2. The contention of the petitioner against Ext.P5 order is that, while Ext.P2 notice was served on him only on 23.12.2014 and he had two weeks time to prefer a reply to the said notice, and he had in fact approached the 1st respondent with Ext.P4 reply, as well as Ext.P3 audit report, on 01.01.2015, he was served with Ext.P5 order dated 31.12.2014; even before the 2nd respondent had an opportunity to go through the contents of the reply and the audit report. It is the contention of the petitioner that, there was no urgency for the 1st respondent to pass Ext.P5 order in such a hurried manner and without considering his reply and without affording him an opportunity of being heard.

3. I have heard Sri.Tomson T. Emmanuel, learned counsel for the petitioner and Smt.Sobha Annamma Eappen, learned

Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that Ext.P5 order of the 1st respondent cannot be legally sustained. It is not in dispute that Ext.P2 notice was served on the petitioner only on 23.12.2014. If that be the case, the petitioner had two weeks time to approach the 1st respondent with a reply to the said notice and also the accompanying documents for the purpose of substantiating his contentions against the proposals in the notice. The petitioner states that, he had approached the office of the 1st respondent on 01.01.2015, with a reply and the supporting documents. Ext.P5 order, however, was passed on a day prior to that. On a consideration of the submissions of the petitioner, I feel that the 1st respondent should adjudicate the matter afresh after taking into account the reply to be submitted by the petitioner, as also the supporting documents relied upon by the petitioner, and after hearing him in the matter. The 1st respondent shall pass a fresh order, in lieu of Ext.P5 order which is hereby quashed, within a period of two months from the date of receipt of a copy of this judgment. To enable the 1st respondent to do

so, I direct the petitioner to appear before the 1st respondent at 11 a.m. on 23.02.2015.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/05/02/