IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 3767 of 2015 (U)

PETITIONER :

K.K. DAMODARAN,
S/O.K.R.KRISHNAN KUTTY, AGED 65 YEARS,
KOLATTU HOUSE, CHOONDAL,
KECHERY P.O., THRISSUR - 680 501.

BY ADVS.SRI.C.HARIKUMAR
SMT.C.B.ANUROOPA

RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER,
   2ND CIRCLE COMMERCIAL TAX,
   THRISSUR - 680 008.

2. DEPUTY TAHASILDAR,
   REVENUE RECOVERY, THALAPPILLY,
   THRISSUR - 680 586.

R1 & R2 BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR.S

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 3767 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32080654394/2005 - 2006 DATED 17/07/2009 FOR THE ASSESSMENT YEAR APRIL 2005 TO MARCH 2006.**

EXT.P2: **THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32080654394/2006 - 2007 DATED 17/07/2009 FOR THE ASSESSMENT YEAR APRIL 2006 TO MARCH 2007.**

EXT.P3: **THE TRUE COPY OF THE ORDER OF THE ASSISTANT COMMISSIONER (APPEALS), THRISSUR DATED 03/09/2010.**

EXT.P4: **THE TRUE COPY OF THE RELEVANT PAGE OF THE LETTER DELIVERY BOOK CONTAINING THE ENTRY DATED 10/08/2010 OF THE 1ST RESPONDENT.**

EXT.P5: **THE TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 34 PRIOR TO ATTACHMENT OF LAND ISSUED BY THE 2ND RESPONDENT DATED 04/12/2014.**

EXT.P6: **THE TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 DATED 04/12/2014 ISSUED BY THE 2ND RESPONDENT UNDER THE REQUISITION OF THE 1ST RESPONDENT.**

EXT.P7: **THE TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 34 ISSUED BY THE 2ND RESPONDENT DATED 10/12/2014.**

EXT.P8: **THE TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 DATED 10/12/2014 ISSUED BY THE 2ND RESPONDENT UNDER THE REQUISITION OF THE 1ST RESPONDENT.**

EXT.P9: **THE TRUE COPY OF THE COMPLAINT DATED 20/01/2015 SUBMITTED BY THE PETITIONER BEFORE THE SALES TAX OFFICER, THRISSUR.**

EXT.P10: **THE TRUE COPY OF THE ASSSESSMENT ORDER ON REMAND FOR THE PERIOD 2005 -2006 DATED 03/06/2014.**

EXT.P11: **THE TRUE COPY OF THE ASSESSMENT ORDER ON REMAND FOR THE PERIOD 2006 - 2007 DATED 03/06/2014.**

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.3767 of 2015 (U)

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Dated this the 6th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P10 and P11 orders that have been passed by the 1st respondent pursuant to the directions of the appellate authority under the Kerala Value Added Tax Act, 2003.

2. It is the case of the petitioner in the writ petition that, while the appellate authority had by Ext.P3 order set aside Exts.P1 and P2 assessment orders passed against the petitioner, and remanded the matter for de novo consideration by the 1st respondent, in the remanded proceedings, the 1st respondent did not serve a notice or hear the petitioner before passing the said orders. It is pointed out that, in the revenue recovery notices that were issued thereafter for recovery of the amounts confirmed against the petitioner by Exts.P10 and P11 orders, the address of the petitioner is correctly shown, and hence, it could not be the case of the respondents that they were not aware of the changed address of the petitioner.

3. I have heard Sri.C.Harikumar, the learned counsel for the

petitioner and Sri.Sudheesh Kumar S., 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 find that in Exts.P10 and P11 orders, there is a mention of a notice having been served on the petitioner which was returned as unserved with the endorsement “returned to sender”. The learned Government Pleader would submit that, the notice was properly served on the petitioner, for the purposes of the Act and hence, even if the notice was returned to the sender there was nevertheless a deemed service of the notice on the petitioner. I note, however, that the revenue recovery notice has been sent to the correct address of the petitioner and the petitioner does not deny receipt of the same. Under those circumstances, and taking note of the fact that, at any rate, there was no hearing afforded to the petitioner prior to the passing of Exts.P10 and P11 orders, I am inclined to quash Exts.P10 and P11 orders and direct the 1st respondent to re-consider the matter. Accordingly, I quash Exts.P10 and P11 orders and Exts.P4, P5, P6, P7 and P8 demand notices and direct the 1st respondent to re-consider the matter and pass fresh orders 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 25.02.2015.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/07/02/