IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 5119 of 2015 (L)

PETITIONER(S):

BENQ INDIA PRIVATE LIMITED,
II/125G, PADATH BUILDING,
EROOR NORTH, PIN - 682 306,
ERNAKULAM DISTRICT,
REPRESENTED BY MR.KRISHNAPRASAD.P.N.
- AUTHORISED SIGNATORY.

BY ADVS.SRI.JOSEPH JERARD SAMSON RODRIGUES
SRI.ROVIN RODRIGUES

RESPONDENT:

THE ASSISTANT COMMISSIONER (ASSESSMENT),
COMMERCIAL TAXES, SPECIAL CIRCLE - III,
ERNAKULAM, KOCHI - 682 015.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 5119 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P-1:	TRUE PHOTOCOPY OF THE NOTICE NO.32070463773/2012-13 DATED 9.1.2015, ISSUED BY THE RESPONDENT.
EXT.P-2:	TRUE PHOTOCOPY OF THE LETTER DATED 3.2.2015, FILED BY THE PETITIONER.
EXT.P-3:	TRUE PHOTOCOPY OF THE ORDER NO.32070463773 DATED 6.2.2015, ISSUED BY THE RESPONDENT.
EXT.P-4:	TRUE PHOTOCOPY OF THE NOTICE OF DEMAND NO.117/2014-15 DATED 6.2.2014, ISSUED BY THE RESPONDENT.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 5119 of 2015 (L)

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Dated this the 20th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 order passed by the respondent completing the assessment under the Kerala Value Added Tax Act, 2003 for the assessment year 2012 - 2013.

2. The contention of the petitioner in the writ petition is that, the order was passed without giving him an opportunity of hearing. The facts, as borne out by Ext.P3 order itself, would disclose that although, notice was issued to the petitioner giving him ten days time to file a reply and also granting him an opportunity of personal hearing on 27.01.2015. The petitioner did not file the reply within the time and did not appear for personal hearing on 27.01.2015.

3. The learned counsel for the petitioner would submit, however, that on 27.01.2015 owing to harthal that was called by one of the political parties, he could not appear for the hearing before the respondent and it is under those circumstances that the respondent proceeded to pass the assessment order.

4. I have heard Sri.Joseph Jerard Samson Rodrigues, learned counsel for the petitioner and Sri.Sudheesh Kumar, learned Government Pleader for the respondent.

5. On a consideration of the facts and circumstances of the case and the

submissions made across the Bar, I find that this is a case where notwithstanding the fact that, the petitioner was issued with a notice and was given an opportunity of personal hearing, the petitioner did not appear for the personal hearing. While under normal circumstances, a challenge against the impugned order would not have been entertained in such circumstances, I find that in the instant case there was a valid reason for the petitioner not appearing for the hearing on 27.01.2015. In my view the respondent ought to have afforded the petitioner a reasonable opportunity of hearing prior to passing Ext.P3 order. The respondent ought not to have proceeded to pass Ext.P3 order in a hurry, as there was no urgency that called for expeditious orders by the respondent. I therefore, quash Ext.P3 order and direct the respondent to pass fresh orders completing the assessment of the petitioner for the assessment year 2012 - 2013, after considering the objections filed by the petitioner and after hearing him in the matter.

To enable the respondent to do so, I direct the petitioner to appear before the respondent at 11 a.m. on 03.03.2015. The respondent shall pass fresh orders as directed, within a period of two weeks thereafter.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/20/02/