IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 5580 of 2015 (V)

PETITIONER(S):

K.M. SEENA, PROPRIETRIX,
SUPER PACKAGING, MSPX/93, PATHIRAPALLY,
ALAPPUZHA-688 521.

BY ADV. SRI.V.DEVANANDA NARASIMHAM.

RESPONDENT(S):
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1. **THE AGRICULTURAL INCOME TAX &**
   COMMERCIAL TAX OFFICER,
   ALAPPUZHA-688 011.

2. **THE DEPUTY COMMISSIONER,**
   COMMERCIAL TAXES, ALAPPUZHA-688 001.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR.

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

rs.

WP(C).No. 5580 of 2015 (V)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ANNUAL RETURN FOR 2013-14 DATED 08.06.2014 E-FILED BY THE PETITIONER.

EXT.P2: TRUE COPY OF FORM 18B CERTIFICATE OF AUDIT DATED 06.06.2014 ISSUED BY 1ST RESPONDENT TO PETITIONER.

EXT.P3: TRUE COPY OF THE PRE-ASSESSMENT NOTICE DATED 01.07.2014 FOR THE YEAR 2013-14 ISSUED BY 1ST RESPONDENT TO PETITIONER.

EXT.P4: TRUE COPY OF REPLY ALONG WITH EVIDENCES DATED 27.07.2014 FILED BEFORE 2ND RESPONDENT AGAINST EXT.P3 NOTICE.

EXT.P5: TRUE COPY OF ASSESSMENT ORDER DATED 19.09.2014 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5580 OF 2015 (V)

Dated this the 2nd day of March, 2015

<u>J U D G M E N T</u>

The challenge in the writ petition is against Ext.P5 order of assessment passed in respect of the petitioner under the KVAT Act for the assessment year 2013-14. In the writ petition, the challenge against Ext.P5 was premised on the contention that, before passing Ext.P5 order, the 1st respondent had not considered the reply filed by the petitioner to the pre-assessment notice that was served on him and further, the petitioner was also not afforded an opportunity of hearing. The learned Government Pleader, on instructions, would submit that, while a pre-assessment notice was served on the petitioner, no reply was forthcoming from the petitioner to the said pre-assessment notice, and under those circumstances, the 1st respondent had no option but to complete the assessment without hearing the petitioner. Although learned counsel for the petitioner would vehemently dispute this submission of the learned Government Pleader and point out that the petitioner had in fact submitted the reply, and the 1st respondent had chosen to ignore it while passing Ext.P5 order, I am not in a position to verify the factual situation in the absence of any document produced by the petitioner to even suggest that the said reply was actually filed with the office of the 1st respondent. At any rate, I find that the petitioner has got an effective alternate remedy against Ext.P5 order by way of an appeal under the KVAT Act, before the Appellate authority. I therefore refrain from interfering with Ext.P5 order of the 1st respondent at this stage, and relegate the petitioner to the alternate remedy of filing an appeal against Ext.P5 order before the Appellate authority under the KVAT Act. The writ petition, in its challenge against Ext.P5 orders fails, and is accordingly dismissed.

It is submitted by counsel for the petitioner that he can file the appeal with the Appellate authority within a period of one week from the date of receipt of a copy of this judgment. Accordingly, I make it clear that proceedings for recovery of balance tax and interest from the petitioner pursuant to Ext.P5 order, shall be kept in abeyance for a period of ten days from the date of receipt of a copy of this judgment, so as to enable the petitioner to pursue his alternate remedy under the KVAT Act against Ext.P5 order.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp