IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 6463 of 2015 (G)

PETITIONER:

M.S.MUHAMMED,
GAMA HIDES, ALFATHAN MANZIL,
AAYIKKAD, KANNAMPILLY BHAGOM,
KEERIKKAD, KAREELAKUNANGARA,
KAYAMKULAM, ALAPPUZHA DISTRICT.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENT:

THE COMMERCIAL TAX OFFICER,
KAYAMKULAM, PIN - 690 502.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 6463 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: **COPY OF ASSESSMENT ORDER FOR THE YEAR 2009 - 2010 ISSUED BY THE 1ST RESPONDENT DATED 23.7.2014.**

EXT.P1(A): **COPY OF ASSESSMENT ORDER FOR THE YEAR 2010 -2011 ISSUED BY THE 1ST RESPONDENT DATED 23.7.2014.**

EXT.P1(B): **COPY OF ASSESSMENT ORDER FOR THE YEAR 2011 - 2012 ISSUED BY THE 1ST RESPONDENT DATED 23.7.2014.**

EXT.P1(C): **COPY OF ASSESSMENT ORDER FOR THE YEAR 2012 - 2013 ISSUED BY THE 1ST RESPONDENT DATED 23.7.2014.**

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.6463 of 2015

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Dated this the 17th day of March, 2015

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

The challenge in the writ petition is against Ext.P1 series of assessment orders passed in relation to the petitioner for the years 2009-2010 to 2012-2013. The sole ground of challenge in the writ petition against the said assessment orders is that the said assessment orders were passed without issuing any notice to the petitioner and without hearing him. The learned Government Pleader, on instructions, would submit that the respondent had in fact served notice to the petitioner by registered post, but the same was returned by the Postal Department with the endorsement “addressee left”. Counsel for the petitioner would place reliance on Section 88 of the Kerala Value added Tax Act which enumerates the manner in which notice has to be served. He would point out that if the notice could not be served in any of the modes specified in Clauses (a) to (e) of Section 88, then the respondent was obliged to affix the notice in some conspicuous place at his last known place of business or residence or by publication in a newspaper. It is his case that in the instant case none of the aforesaid steps were taken by the respondent.

2. I have heard the learned counsel for the petitioner and the

learned Government Pleader for the respondent.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that it is not in dispute that the publication of the notice, in accordance with Section 88 (f) of the Kerala Value Added Tax Act was not resorted to in the instant case. As a consequence, the petitioner did not have any notice of the proposed assessment, and he was also not afforded a personal hearing before completion of the said assessment. I also take note of the contention of the learned counsel for the petitioner that the differential tax demand is only on account of non-consideration of certain C-Forms that had to be produced by the petitioner, and other defects of a like nature. It is his submission that if he is given an opportunity to present his case before the assessing authority, the said defects can be pointed out and the liability minimized. Taking note of the said contentions of the petitioner, I find that Exts.P1 series of assessment orders are vitiated on account of non-compliance with the rules of natural justice. I, therefore, quash Ext.P1 series of assessment orders, and direct the respondent to complete the assessments in relation to the petitioner for the assessment years 2009-2010 to 2012-2013 afresh after hearing the petitioner. To enable the respondent to do

so, I direct the petitioner to appear before the respondent at 11 am on 30.03.2015. The respondent shall pass fresh orders as directed within a period of two months from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns