IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No.7109 of 2015 (K)

PETITIONER:

SHAJAHAN.P.A,PROPRIETOR,
FATHIMA FASHION FURNITURE,
NEAR COLLEGE JN,MUVATTUPUZHA,
ERNAKULAM DISTRICT,PIN - 686 661.

BY ADVS.SRI.MOHAMMED RAFIQ
SRI.M.G.SHAJI

RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER,
MUVATTUPUZHA,ERNAKULAM DISTRICT,PIN-686 661.

2. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES,MUVATTUPUZHA,ERNAKULAM,
PIN - 686 661.

3. THE STATE OF KERALA,REPRESENTED BY THE SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES,
TRIVANDRUM,PIN-695 001.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No.7109 of 2015 (K)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:THE TRUE COPY OF THE ANNUAL RETURN IN FORM NO.10 RELATING TO THE YEAR 2011-12 BEARING NO.321514/WR01/18093/2011 DATED 23.09.2012 FILED BY THE PETITIONER.

EXT.P2:THE TRUE COPY OF THE ANNUAL RETURN IN FORM NO.10 RELATING TO THE YEAR 2012-13 BEARING NO.321514/WR01/20367/2012 DATED 11.07.2014 FILED BY THE PETITIONER.

EXT.P3:THE TRUE COPY OF THE ASSESSMENT ORDER NO.32151442781/11-12 DATED 1.11.2014 RELATING TO THE YEAR 2011-12 PASSED BY THE 1ST RESPONDENT UNDER SECTION 25(1) OF THE KERALA VALUE ADDED TAX ACT, 2003.

EXT.P4:THE TRUE COPY OF THE ASSESSMENT ORDER NO.32151442781/12-13 DATED 1.11.2014 RELATING TO THE YEAR 2012-13 PASSED BY THE 1ST RESPONDENT UNDER SECTION 25(1) OF THE KERALA VALUE ADDED TAX ACT, 2003.

EXT.P5:THE TRUE COPY OF THE JUDGMENT DATED 25.09.2014 OF THE HON'BLE HIGH COURT OF KERALA IN O.T.REV.49 OF 2014.

EXT.P6:THE TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT, 1968 BEARING NO.RRC545/14-15 DATED 13.02.2015 ISSUED BY THE 2ND RESPONDENT.

EXT.P7:THE TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT, 1968 BEARING NO.RRC 544/14-15 DATED 13.02.2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 7109 of 2015 (K)

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Dated this the 6th day of March, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, 2003, is aggrieved by Exts.P3 and P4 assessment orders, passed for the assessment years 2011 - 2012 and 2012 - 2013, in terms of Section 25 of KVAT Act.

2. In the writ petition, the grievance of the petitioner is that, Ext.P4 order was passed on best judgment basis solely on the ground that, the petitioner had not filed the audit report in Form-13 and audited statement in Form-13A as provided under Section 42 of the KVAT Act. It is the specific case of the petitioner that the technical omissions noted by the respondents cannot by themselves form the basis of a best judgment assessment that is done without reference to any other material, such as books of accounts and the trading accounts of the petitioner.

3. I have heard Sri.Mohammed Rafiq, learned counsel appearing for the petitioner as also Smt.Sobha Annamma Eappen, learned Government Pleader appearing for the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that the issue as to whether the assessment under Section 25 can be completed on best judgment basis solely on the ground that, audited statement in Form-

13 and 13A are not filed, has already been decided in favour of the assessee, through Ext.P5 judgment of the Division Bench of this Court. In that view of the matter, Exts.P3 and P4 assessment orders of the first respondent, to the extent it does not rely on any other material, other than the fact of non production by the petitioner of Form-13 and 13A, while completing the re-assessment against him, cannot be legally sustained. Accordingly, I quash Exts.P3 and P4 assessment orders of the first respondent and direct him to pass fresh orders, after perusing the books of accounts and other documents relied upon by the petitioner to substantiate his contentions regarding the correctness of the accounts maintained by him. The first respondent shall pass fresh orders in the matter within a period of three months from the date of receipt of a copy of this judgment. The first respondent shall afford an opportunity of hearing to the petitioner, and also advert to the various materials that are relied upon by the petitioner to substantiate his contentions on merits. To enable the first respondent to do this, I direct the petitioner to appear before the first respondent at 11 a.m. on 25.03.2015 for a hearing in connection with the fresh adjudication that is directed in this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/07/03/