IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 7194 of 2015 (Y)

PETITIONER :

M/S.LLM APPLIANCES LTD.,
DOOR NO.5/188-B, KAITHAPADATH WAREHOUSE,
COCHIN PUBLIC SCHOOL ROAD,
PIPELINE JUNCTION, THRIKKAKKARA - 682 021
REPRESENTED BY ITS AUTHORIZED SIGNATORY SRI.SRINIVAS A.E.

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD

RESPONDENT :

ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE-3, ERNAKULAM - 682 016.

BY SENIOR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 7194 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE APPLICATION DATED 12.1.2015.

EXT.P-2: TRUE COPY OF THE ASSESSMENT ORDER FOR 2011 - 12.

EXT.P-3: TRUE COPY OF THE ASSESSMENT ORDER FOR 2012 - 13.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 7194 of 2015 (Y)

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Dated this the 11th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P2 and P3 assessment orders, which have been passed in relation to the petitioner for the assessment years 2011 – 2012 and 2012 – 2013 under the Kerala Value Added Tax Act, 2003.

2. The main ground of challenge against Exts.P2 and P3 orders, in the writ petition is that, the said orders were passed without hearing the petitioner and further, that the orders were passed solely for the reason that the audited statement of accounts in Form 13 and 13A had not been filed by the petitioner.

3. I have heard Sri.A.Kumar, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader 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 fact that the audited statement of accounts in Form 13 and 13A had not been filed by the petitioner, cannot be the sole basis for a fresh assessment in terms of Section 25(1) of the KVAT Act. This position in law has been reiterated in a number of decisions

of this Court. If the assessing authority has reason to believe that, there has been an escapement of turnover, then, the assessing authority has to record his satisfaction that, there has been an escapement based on material, other than the absence of Form 13 and 13A statements. Inasmuch as, I do not see any such material referred to in Exts.P2 and P3 orders, I quash the said orders and direct the respondent to pass fresh orders of assessment in relation to the petitioner for the assessment years 2011 – 2012 and 2012 – 2013 after giving an opportunity of hearing to the petitioner. To enable the respondent to do so, I direct the petitioner to appear before the respondent at his office at 11 a.m. on 25.03.2015.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/12/03/