IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 7376 of 2015 (V)

PETITIONER(S):

C.K.MUHAMMED SHERIFF,
C.K.ELECTRICALS,
EDAKKARA, MALAPPURAM DISTRICT.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR
SRI.K.UMAMAHESWAR.

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER,
NILAMBUR, MALAPPURAM DISTRICT - 676 336.

2. INSPECTING ASST. COMMISSIONER,
COMMERCIAL TAXES, MANJERI,
MALAPPURAM DISTRICT - 676 336.

BY SENIOR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: COPY OF REGISTRATION CERTIFICATE.

EXHIBIT P2: COPY OF REPORT THAT APPEARED IN THE MALAYALA MANORAMA DAILY DATED 28.7.2013.

EXHIBHTI P3: COPY OF INTERIM ORDER DATED 11.3.2014 OF THE SUBORDINATE JUDGE, MANJERI IN O.S.NO.161/2013.

EXHIBIT P4: COPY OF LETTER DATED 11.3.2014 RECEIVED FROM THE SECRETARY, EDAKKARA GRAMA PANCHAYATH.

EXHIBHIT P5: COPY OF NOTICE DATED 11.9.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2009-2010.

EXHIBIT P5(A): COPY OF NOTICE DATED 12.9.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2010-2011.

EXHIBIT P5(B): COPY OF NOTICE DATED 12.9.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2011-2012.

EXHIBIT P6: COPY OF LETTER SENT TO THE IST RESPONDENT BY REGISTERED POST ON 10.10.2014 ALONG WITH THE MEDICAL CERTIFICATE.

EXHIBIT P7: COPY OF NOTICE DATED 13.1.2015 ISSUED BY THE 2ND RESPONDENT UNDER THE RR ACT FOR THE YEAR 2009-2010.

EXHIBIT P7(A): COPY OF NOTICE DATED 13.1.2015 ISSUED BY THE 2ND RESPONDENT UNDER THE RR ACT FOR THE YEAR 2010-2011.

EXHIBIT P7(B): COPY OF NOTICE DATED 13.1.2015 ISSUED BY THE 2ND RESPONDENT UNDER THE RR ACT FOR THE YEAR 2011-2012.

EXHIBIT P8: COPY OF ASSESSMENT ORDER DATED 20.11.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2009-2010.

EXHIBIT P8(A): COPY OF ASSESSMENT ORDER DATED 20.11.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2010-2011.

EXHIBIT P8(B): COPY OF ASSESSMENT ORDER DATED 19.10.2013 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2011-2012.

EXHIBIT P9: COPY OF PENALTY ORDER DATED 20.11.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2009-2010.

EXHIBIT P9(A): COPY OF PENALTY ORDER DATED 20.11.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2010-2011.

EXHIBIT P9(B): COPY OF PENALTY ORDER DATED 20.11.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2011-2012.

EXHIBIT P10: COPY OF LETTER DATED 11.2.2015 ADDRESSED TO THE IST RESPONDENT.

EXHIBIT P11: COPY OF LETTER DATED 12.2.2015 OF THE IST RESPONDENT.

EXHIBIT P11(A): COPY OF NOTICE DATED 14.10.2014 OF THE IST RESPONDENT RECEIVED ALONG WITH EXT.P11.

EXHIBIT P11(B): COPY OF ACKNOWLEDGMENT CARD FOR EXT.P11(A) NOTICE.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 7376 of 2015 (V)

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Dated this the 9th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P8 series of assessment orders, and Ext.P9 series of penalty orders, which have been passed against the petitioner under the Kerala Value Added Tax Act, 2003 [for short, 'KVAT Act']. The case of the petitioner is that, the aforesaid orders were passed without issuing any notice and without hearing the petitioner.

2. It is the case of the petitioner that, while he was served with Ext.P5 series of notices, and he had sought an extension of time for furnishing a reply to the said notices through Ext.P6 series of letters, the extension of time was not granted by the respondent, who proceeded to pass Ext.P8 series and Ext.P9 series of orders, which were not communicated to the petitioner. It is the specific case of the petitioner that he had to obtain the said orders through a query under the Right to Information Act.

3. I have heard Sri. S.Anil 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 the submissions made across the Bar, I find that inasmuch as the petitioner has now received Ext.P8 series of assessment orders and Ext.P9 series of penalty orders, he has an effective alternate remedy against the said orders by way of filing appeals and revisions under the KVAT Act before the appellate/revisional authority.

5. Taking note of the submissions of the learned counsel for the petitioner, that

Exts.P8 and P9 series of orders were passed without hearing him, and even the orders were not communicated to him in time, I, direct that recovery proceedings initiated against the petitioner through Ext.P7 series shall be kept in abeyance for a period of three weeks from today, so as to enable the petitioner to move the appellate/revisional authority against Exts.P8 and P9 series of orders. The writ petition is, therefore, disposed with the following directions:

> i) The proceedings initiated against the petitioner through Ext.P7 series of revenue recovery notices shall be kept in abeyance for a period of three weeks from today.
>
> ii) The petitioner shall approach the appellate/revisional authorities under the KVAT Act against Exts.P8 and P9 series of orders in the meanwhile.
>
> Iii) It is made clear that, the stay granted in this judgment shall cease to be in force on expiry of the aforementioned period of three weeks.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/10/03/