IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 9158 of 2015 (T)

PETITIONER :

M/S.VEMBANAD TEMPO,
AMC 12/407 A, N.H. ROAD, ARATTUVAZHY,
ALAPPUZHA-688 007, REPRESENTED BY ITS PROPRIETOR,
M. RADHAKRISHANA.

BY ADV. SRI.K.J.ABRAHAM

RESPONDENT(S):
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1. THE AGRICULTURAL INCOME TAX & COMMERCIAL TAX OFFICER,
O/O. THE AGRICULTURAL INCOME TAX & COMMERCIAL TAX OFFICER,
ALAPPUZHA -688 001

2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOLLAM- 691 013

R1 & R2 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 9158 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1- TRUE COPY OF THE ORIGINAL ASSESSMENT ORDER NO. 32041381522/2007-08 DATD 14/11/2014.

EXHIBIT-P2- TRUE COPY OF THE APPELLATE ORDER IN KVATA (ALPY) 1086/2012 DATED 30/10/2014.

EXHIBIT-P3- TRUE COPY OF THE NOTICE NO. 32041381522/2007-2008 DATED 05/01/2015.

EXHIBIT-P4- TRUE COPY OF THE ADJOURNMENT LETTER DATED 06/02/2015.

EXHIBIT-P5- TRUE COPY OF THE ACKNOWLEDGMENT BY THE IST RESPONDENT DATED 07/02/2015.

EXHIBIT-P6- TRUE COPY OF THE RECEIPT ISSUED BY THE INDIAN POSTAL SERVICE DATED 07/02/2015.

EXHIBIT-P7- TRUE COPY OF THE ASSESSMENT ORDER NO. 32041381522/2007-2008 DATED 18/02/2015.

EXHIBIT-P8- TRUE COPY OF THE MEDICAL CERTIFICATE DATED 13/01/2015.

EXHIBIT-P9- TRUE COPY OF THE MEDICAL FITNESS DATED 19/02/2015.

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 9158 of 2015

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Dated this the 23rd day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 order passed by the 1st respondent, completing the assessment of the petitioner under the Kerala Value Added Tax Act, hereinafter referred to as 'KVAT Act', for the assessment year 2007-08. The contention in the writ petition against Ext.P7 order is that the said order was passed in gross violation of the rules of natural justice, in that the petitioner was not afforded an opportunity of being heard prior to passing of the said order.

2. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader for the respondents as well.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that this is a case where the assessment order originally passed against the petitioner for the same assessment year, was carried in appeal by the appellant, before the first appellate authority. The first appellate authority has already passed Ext.P2 order, accepting the contention of the petitioner that the assessing authority had not

verified the books of accounts of the petitioner prior to completion of the assessment, and had also not heard the petitioner, prior to passing of the said order. Taking note of the said fact, the appellate authority set aside the assessment order and remanded the matter back to the original authority. In Ext.P2 appellate order, the appellate authority directed the petitioner to file his objections within one month from the date of the appellate order by treating the appellate order as a pre-assessment notice, on which the assessing authority was to pass appropriate orders, after considering the objections of the petitioner. It is not in dispute that even after receipt of Ext.P2 order, the petitioner did not file his objections, within the period granted by the appellate authority. Instead, the petitioner appears to have submitted Ext.P4 representation before the assessing authority seeking further period of one month from 06.02.2015, for producing the relevant objections. When nothing was done by the petitioner even after that, the assessing authority proceeded to pass Ext.P7 order, confirming the assessment as originally completed. It is against this order (Ext.P7) of the assessing authority that the petitioner has approached this Court with the present writ petition.

4. On a consideration of the conduct of the petitioner in not filing his objections within the time granted by the first appellate authority, I am of the view that the challenge in the writ petition, against Ext.P7 order, on the ground that it has been passed in violation of the rules of natural justice, cannot be entertained. Thus, without making any observations as regards the merits of the petitioner's case, I relegate the petitioner to the alternate remedy of filing an appeal against Ext.P7 order of the 1st respondent before the appellate authority under the KVAT Act.

The writ petition in its challenge against Ext.P7 order, fails and is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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