**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937**

**WP(C).No. 9570 of 2015 (U)**
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**PETITIONER :**
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**M/S. CHOICE CONSTRUCTIONS,**
**IV/432A, P.V.SREEDHARAN ROAD, KUMBALAM,**
**KOCHI, REPRESENTED BY ITS AUTHORISED SIGNATORY**
**THOMAS JOSE.**

**BY ADV. SRI.JOSE JACOB**

**RESPONDENT(S):**
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1. **STATE OF KERALA,**
   **REPRESENTED BY THE SECRETARY, COMMERCIAL TAXES,**
   **GOVT OF KERAKLA, TRIVANDRUM, KERALA,PIN-695 001**

2. **ASSISTANT COMMISSIONER (WC & LT),**
   **OFFICE OF THE DEPUTY COMMISSIONER,**
   **COMMERCIAL TAXES DEPARTMENT, 2ND FLOOR,**
   **CLASS TOWER, OLD RAILWAY STATION, KOCHI-8**

**BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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WP(C).No. 9570 of 2015 (U)
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APPENDIX

PETITIONER(S)' EXHIBITS
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EXHIBIT P1: TRUE COPY OF NOTICE UNDER SECTION 25(1) RELTING TO AY 2010-11 DATED 10.11.2014

EXHIBIT P2: TRUE COPY OF THE REPLY TO NOTICE SECTION 25(1) RELTING TO AY 2010-11 DATED 06.02.2015

EXHIBIT P3: TRUE COPY OF THE ORDER AND DEMAND NOTICE RELAING TO AY 2010-11 DATED 20.2.2015

EXHIBIT P4: TRUE COPY OF THE JUDGMENT PASSED BY THE HON'BLE COURT OF KERALA DATED 03.12.2014

RESPONDENT(S)' EXHIBITS: NIL
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/TRUE OPY/

P.A.TO JUDGE

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**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C).NO.9570 OF 2015**

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**Dated this the 9th day of April, 2015**

**J U D G M E N T**

The challenge in the writ petition is against Ext.P3 order relating to the assessment of the petitioner, under the Kerala Value Added Tax Act, for the assessment year 2010-2011. The main ground of challenge against Ext.P3 order in the writ petition is that the petitioner was not heard prior to the passing of the said order.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that although in Ext.P3 order, there is a reference to a personal hearing having been extended to the petitioner, the learned Government Pleader on instructions would submit that the authorised representative of the petitioner was heard, but there is no record with the respondents to suggest that the authorised representative had appeared before the adjudicating authority on that date. I take note of the strong objection taken by counsel for the petitioner, to the averment in Ext.P3 order that a hearing was afforded to the

petitioner assessee. It is his specific contention that although there is a reference to a hearing in Ext.P3 order, there was no such hearing that was given to the petitioner. In the light of the fact that the respondents have not been able to show any proof of the authorised representative having attended a hearing before the respondents, on the date fixed for personal hearing, I am of the view that the benefit of doubt should go to the assessee and Ext.P3 order cannot be legally sustained.

Resultantly, I quash Ext.P3 and direct the 2nd respondent to complete the assessment in relation to the petitioner, for the assessment year 2010-2011 afresh, after hearing the petitioner. The 2nd respondent shall do this within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. To enable the 2nd respondent to do so, I direct the petitioner to approach the office of the 2nd respondent at 11 am on 23rd April, 2015.

**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

mns