IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WP(C).No. 13072 of 2015 (H)

PETITIONER :

M/S.SEA SHELL,
NEERKUNNAM, VANDANAM, ALAPPUZHA,
REPRESENTED BY ITS MANAGING PARTNER, AYSHA.K.E.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S):

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1. THE COMMERCIAL TAX OFFICER,
   1ST CIRCLE, ALAPPUZHA. PIN-688 001

2. DEPUTY TAHSILDAR (REVENUE RECOVERY),
   TALUK OFFICE, AMBALAPUZHA.PIN-688 561

BY GOVERNMENT PLEADER SMT. LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 13072 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **COPY OF RETURN FILED BY THE PETITIONER DATED 24.10.2012.**

EXHIBIT P2: **COPY OF NOTICE ISSUED BY THE PETITIONER BEFORE THE IST RESPONDENT DATED 18.10.2014.**

EXHIBIT P3: **COPY OF RETURN FILED BY M/S. WINALITE INTERNATIONAL TRADING INDIA (P) LTD. DATED 22.10.2012.**

EXHIBIT P4: **COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT DATED 21.10.2014.**

EXHIBIT P5: **COPY OF JUDGMENT IN WPC NO.6776/15 OF THIS HON'BLE COURT DATED 20.3.2015.**

EXHIBIT P6: **COPY OF ORDER ISSUED BY THE IST RESPONDENT DATED 2.12.2014.**

EXHIBIT P7: **COPY OF NOTICE IN FORM 1 ISSUED BY THE 2ND RESPONDENT DATED 13.2.2015.**

EXHIBIT P7(A): **COPY OF NOTICE IN FORM 10 ISSUED BY THE 2ND RESPONDENT DATED 13.2.2015.**

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

/TRUE COPY/

P.A.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.13072 of 2015

Dated this the 4th day of June, 2015

<u>J U D G M E N T</u>

The petitioner has filed this writ petition challenging Ext.P6 assessment order. The main grievance of the petitioner is that, even though he has given reply and also produced relevant documents, none of the documents were adverted before completion of the assessment. The petitioner also submits that he has sought for personal hearing in the objection and he was also not afforded with such an opportunity.

2. In Ext.P6 order it is noticed as follows :

> “ The above notice was duly served to the dealer on 6-11-14. But the assessee has not filed any reply to disprove the proposals made in the notice dated 18-10-14. On going through the reply filed it was admitted by the dealer that non remittance of collected tax as per return filed for 2012-13 was due to a mistake happened on the side of auditors. I have verified the monthly return filed very carefully it was learned that objections raised by dealer has any merit and hence rejected and it is proposed to impose the defects pointed out in the notice u/s. 25(1) of the Act and the assessment for the year 2012-13 is completed as proposed in the above notice for best of my judgment. Hence the following order are issued.”

3. Though objection has been adverted, the petitioner's annexures were not considered by the authority. The petitioner submits that, if an opportunity of personal hearing is given, he will

be able to substantiate his objections to the proposal. In view of the fact that the petitioner is reserved with an opportunity of personal hearing, I am of the view that, the assessing authority ought to have given such an opportunity to the petitioner before completion of the proceedings.

4. In view of the above, Ext.P6 is set aside on condition that, the petitioner shall remit an amount of ₹1,00,000/- (Rupees One lakh only) within a period of three weeks from today. The petitioner shall appear before the 1st respondent on 02.07.2015 along with relevant documents and proof of remittance of the above amount. The 1st respondent is directed to complete the entire exercise within a further period of two months, after hearing the petitioner.

This writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV