IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 15539 of 2015 (N)

PETITIONER :

M/S.SREE BALAJI AGENCIES,
KOCHUVELI, THIRUVANANTHAPURAM, PIN-695 021
REPRESENTED BY ITS PROPRIETRIX, MRS. MEENAKSHI
W/O.MUTHUKUMAR, RESIDING AT TC 43/305(2), BNRA 94
MAHAMADURA NIVAS, BALAVAN NAGAR, MANACAUD
THIRUVANANTHAPURAM, PIN-695 009.

BY ADVS.SRI.P.G.JAYASHANKAR
SRI.V.SURESH (TRIVANDRUM)

RESPONDENTS :
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1. **STATE OF KERALA**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT, TRIVANDRUM-695 001.

2. **THE COMMISSIONER,**
   COMMERCIAL TAXES, TAXES TOWER, KARAMANA
   THIRUVANANTHAPURAM-695 002.

3. **THE COMMERCIAL TAX OFFICER,**
   SECOND CIRCLE, TAXES TOWER, KARAMANA
   THIRUVANANTHAPURAM-695 002.

BY SENIOR GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 15539 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : TRUE COPY OF THE MONTHLY RETURNS FOR THE YEAR 2009-10 FILED BY THE PETITIONER.

P2 : TRUE COPY OF THE PURCHASE LIST FOR THE YEAR 2009-10.

P3 : TRUE COPY OF THE ANNUAL RETURN FOR THE YEAR 2009-10.

P4 : TRUE COPY OF THE AUDITED ACCOUNTS FOR THE YEAR 2009-10.

P5 : TRUE COPY OF THE AUDITED STATEMENT IN FORM 13.

P5(A) : TRUE COPY OF THE AUDITED STATEMENT IN FORM 13 A.

P6 : TRUE COPY OF THE NOTICE UNDER S.25 OF THE KVAT ACT.

P7 : TRUE COPY OF THE OBJECTIONS DATED 4-3-2015.

P8 : TRUE COPY OF THE ORDER UNDER S.25 DATED 25-4-2015.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.15539 of 2015

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Dated this the 2nd day of June, 2015

JUDGMENT

The petitioner impugns Ext.P8 assessment order. The petitioner raised objection to the notice by Ext.P7. It is stated in Ext.P7 objection as follows:

> "You are allegation of unaccounted purchases for an amount of Rs.20,57,826.00/- is not correct. All the purchases have been accounted. The corresponding sales there also accounted and conceded in the return as bakery product. You may kindly give an opportunity to produce our account to prove that all purchases and sales have been accounted in the books of account and conceded in the return filed. The suppliers instead of uploading invoice war sales, appear to have uploaded total sales for a month. This may be the reason for mismatch."

2. The petitioner in the objection itself sought leave of the authority to give opportunity to produce account book to prove that the purchases and sales have been accounted in the books. The petitioner's case is that in spite of such specific request has been

made in the objection, no opportunity was given to them. It is submitted that the assessment made merely based on the reply given by the petitioner is unsustainable. It is submitted that the petitioner was not given an opportunity to produce those books of accounts to substantiate their contention. The petitioner, therefore, assails the assessment order alleging violation of the principles of natural justice.

3. Learned Government Pleader submits that when an assessee left the matter to be decided by the Assessing Authority based on their objection, the assessee cannot assail the order alleging non-observance of rule of natural justice.

4. In this case, the assessee after submitting objection, sought specific request to give an opportunity to them to produce books of accounts. The natural justice has to be understood in the light of the objection raised by the petitioner. If the Assessing Authority is dissatisfied with the objection on any material ground, necessarily, the assessee should be put notice of such dissatisfaction so as to give him the opportunity to produce evidence to substantiate their objection. Absolutely, there is no such

opportunity was given to the petitioner in spite of such specific request made by them in the notice.

In that view of the matter, I am of the view, the assessment is completed denying the petitioner to give substantial opportunity to produce books of accounts. Accordingly, the assessment order is set aside. The petitioner shall make available the entire books of accounts before the Assessing Authority on 07.07.2015. Thereafter, after hearing the petitioner, appropriate decision shall be taken within a further period of two months.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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