IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No. 15894 of 2015 (J)

PETITIONER(S) :

SRI. SANIF KHAN,
AL-BARKA TRADERS, MANKASSERRY HOUSE,
KANJIRAPPALLY - 686 507

BY ADV. SRI.P.N.DAMODARAN NAMBOODIRI

RESPONDENT(S) :
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1. THE COMMERCIAL TAX OFFICER,
   DEPARTMENT OF COMMERCIAL TAXES,
   PONKUNNAM - 680 506.

2. THE INSPECTING ASST.COMMISSIONER
   COMMERCIAL TAXES DEPARTMENT, PALA - 686 575.

BY GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 15894 of 2015 (J)
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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **TRUE COPY OF THE MONTHLY RETURN, FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR THE MONTH JULY DATED 22.08.2014.**

EXT.P1A: **TRUE COPY OF THE MONTHLY RETURN, FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR THE MONTH AUGUST DATED 20.09.2014.**

EXT.P1B: **TRUE COPY OF THE MONTHLY RETURN, FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR THE MONTH SEPTEMBER DATED 21.01.2015.**

EXT.P2: **TRUE COPY OF THE NOTICE U/S.25(1) BEARING NO.32050818178/2014-15(07/14) DATED 12.12.2014 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER**

EXT.P2A: **TRUE COPY OF THE NOTICE U/S.25(1) BEARING NO.32050818178/2014-15 (08/14) DATED 12.12.2014 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.**

EXT.P2B: **TRUE COPY OF THE NOTICE U/S.25(1) BEARING NO.32050818178/2014-15 (09/14) DATED 12.12.2014 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.**

EXT.P3: **TRUE COPY OF THE NOTICE U/S.67(1) BEARING NO.32050818178/2014-15(07/14) DATED 12.12.2014 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.**

EXT.P3A: **TRUE COPY OF THE NOTICE U/S.67(1) BEARING NO.32050818178/2014-15 (09/14) DATED 12.12.2014 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.**

EXT.P4: **TRUE COPY OF THE ADJOURNMENT REQUEST DATED 05.01.2015, FOR THE YEAR 2014 - 15, FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**

EXT.P5: **TRUE COPY OF THE ASSESSMENT ORDER U/S 25(1) NO.32050818178 (FOR 07/14) DATED 13.01.2015 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.**

EXT.P5A: **TRUE COPY OF THE ASSESSMENT ORDER U/S.25(1) NO.32050818178(FOR 08/14) DATED 13.01.2015 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.**

EXT.P5B: **TRUE COPY OF THE ASSESSMENT ORDER U/S.25(1) NO.32050818178 (FOR 09/14) DATED 13.01.2015 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.**

WP(C).No. 15894 of 2015 (J)

EXT.P6: TRUE COPY OF THE PENALTY ORDER U/S 67(1) NO.32050818178/07/2014-15 DATED 13.01.2015 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P6A: TRUE COPY OF THE PENALTY ORDER U/S 67(1) NO.32050818178/09/2014-15DATED 13.01.2015 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P7: TRUE COPY OF THE APPLICATION UNDER RIGHT TO INFORMATION ACT DATED 10.02.2015 FILED BY THE PETITIONER BEFORE THE HIGHER AUTHORITY DEPUTY COMMISSIONER, KOTTAYAM.

EXT.P8: TRUE COPY OF THE REPLY DATED 04.04.2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

Msd.

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.15894 of 2015

Dated this the 10th day of June, 2015

J U D G M E N T

The petitioner impugns assessment order as well as penalty order imposed on him. The main ground of challenge by the petitioner is that, he has not given sufficient opportunity in the matter. The petitioner relies on Ext.P4 request made before the authority on 05.01.2015. The petitioner specifically sought time for the reason that, they need to produce Sales Return Credit Note. The order was passed on 13.01.2015. The petitioner submits that, on account of non production of Sales Return Credit Note, the assessing authority made the assessment by noting irregularity in input credit.

2. There is no mentioning in the impugned order about the request made by the petitioner as per Ext.P4, though it is seen that, the same is acknowledged by the authority. The learned Government Pleader submits that, it was rejected on the same day itself.

3. Considering the facts and circumstances, I am of the view that, the petitioner specifically sought for time to produce Sales Return Credit Note within 15 days time. Necessarily, such a request ought to have been entertained by the authority. Natural justice warrants substantial compliance of the process for both the assessee as well as the assessing authority. The material which now sought to be relied by the petitioner is essentially required for

consideration for determining the liability of the petitioner.

In that view of the matter denial of natural justice would vitiate entire process against the petitioner. Accordingly, impugned orders are set aside. The petitioner shall appear before the assessing authority on 01.07.2015 along with all documents. The authority is directed to pass fresh orders, after hearing the petitioner within a further period of six weeks.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV