IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No. 16045 of 2015 (E)
--

PETITIONER(S):

**M/S. DEN NETWORKS LTD.,
DR. KOSHUY'S ARCADE, 2ND FLOOR, PLOT NO. 153/8
A2, OPP. OBERON MALL, BYEPASS ROAD,
EDAPPALLY KOCHI-24, REPRESENTED BY SONY C,
MANAGER (FINANCE & ACCOUNTS).**

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

RESPONDENT(S):
----

1. **THE COMMERCIAL TAX OFFICER,
2ND CIRCLE, KALAMASSERY AT CIVIL STATION,
KAKKANAD, KOCHI-30.**

2. **INSPECTING ASST. COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
KAKKANAD, KOCHI-30.**

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 16045 of 2015 (E)
--

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:	**COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT**
EXT.P2:	**COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT**
EXT.P1(B):	**COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT**
EXT.P2:	**COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT**
EXT.P2(A):	**COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT**
EXT.P3:	**COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT**
EXT.P3(A):	**COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT**
EXT. P4:	**COPY OF ORDER ISSUED BY THE 1ST RESPONDENT**
EXT.P5:	**COPY OF ORDER ISSUED BY THE 1ST RESPONDENT**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A. MUHAMED MUSTAQUE, J.

W.P. (C). No. 16045 of 2015

Dated this the 1st day of June, 2015

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

The petitioner impugnes Ext.P5 order passed in a penalty proceedings. In the order, it is stated as follows:

> *"The assessee acknowledged the notice on 31.10.2014. On 18.11.2014 the assessee filed a reply involving objections to the proposal for assessment Under Rule 6(5) of the CST (Kerala) Rules 1957 referred 2nd above but not filed any explanation towards the above penalty proposal for Rs.1,05,99,748.00 for 2011-12."*

2. With respect to the penalty proceedings, the petitioner raised objections as per Ext.P3(a); the relevant portion of which reads as follows:

> *"With respect to the proceedings initiated under Section 67, proposing penalty, we may point out that no grounds exists for imposition of penalty for the simple reasons that the transaction in fact is a purchase by the New Delhi office. Proceedings are initiated for levying penalty only on account of an incorrect understanding of the factual situation. So much so, the proposal to impose penalty is without any basis.*
>
> *Without prejudice, we may point out that even according to you the entire details are taken from the website of the department. In other words we by ourselves have declared the particular transportation at the border check post. This*

> *proves that there was no malafide intention on our part. When there is no malafide intention, question of imposing penalty does not arise. So much so, the penalty proposals may also be dropped.*
>
> *Without prejudice, the proposal to impose maximum penalty is without any basis and circumstances requiring levy of maximum penalty is not pointed out. So much so, if at all any penalty is required that is to be limited to a nominal one."*

3. In view of the reply given by the petitioner as above, finding in the impugned order that in the penalty proceedings the petitioner has not explained anything regarding the penalty notice is unsustainable.

4. In that view of the matter the impugned order is set aside. However, the petitioner will be at liberty to submit any detailed explanation or objection regarding the penalty notice. If the petitioner wants to make any such objection, it shall be done within a period of one month from today and the entire proceedings against the petitioner shall be concluded within a further period of one month thereafter.

The writ petition stands disposed of. Needless to say that the petitioner will be heard before passing final order.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

Pn