IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WP(C).No. 16249 of 2015 (E)

PETITIONER(S) :

M/S.LOTUS CLUB,
WARRIAM ROAD, KOCHI- 682 016,
REPRESENTED BY ITS HONORARY SECRETARY,
MR.TOM EDWARD.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

RESPONDENT(S) :
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**

2. **COMMERCIAL TAX OFFICER (WC & LT), OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM-KOCHI 682 018.**

BY GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 16249 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **TRUE COPY OF THE NOTICE DATED 18-04-2015 ISSUED BY THE 2ND RESPONDENT U/S 6(2) OF THE KERALA TAX ON LUXURIES ACT, 1976 FOR THE YEAR 2013-14.**

EXHIBIT P2: **TRUE COPY OF THE LETTER DATED 25-04-2015 ADDRESSED TO THE 2ND RESPONDENT.**

EXHIBIT P3: **TRUE COPY OF THE RELEVANT PAGE OF THE LETTER DELIVERY BOOK ENDORSING THE RECEIPT OF EXT.P2 LETTER ON 02-05-2015 BY THE OFFICE OF THE 2ND RESPONDENT.**

EXHIBIT P4: **TRUE COPY OF THE ORDER OF ASSESSMENT DATED 30-04-2015 ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2013-14.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.16249 of 2015

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Dated this the 5th day of June, 2015

JUDGMENT

The petitioner impugns assessment order under the Kerala Tax on Luxuries Act, 1976, challenges on the ground that the order is passed without giving sufficient opportunity to the petitioner to substantiate their objection.

2. The impugned order is produced as Ext.P4. It is stated in Ext.P4 is as follows:

> "The notice was served to the assessee on 20.4.2015. They have not filed any objection to the proposal contained in the pre-assessment notice. An opportunity for personal hearing was also granted for the assessee. They have not utilized the opportunity for personal hearing."

3. The case of the petitioner is that the Officer was not therein the office on 25.4.2015 and therefore, they were under the impression that they will be informed about the posting, to raise objection.

4. Learned Government Pleader opposes the prayer of the petitioner and submits that the petitioner has been given sufficient opportunity and they did not avail such opportunity.

The fact remains that the notice was served on the petitioner on 20.4.2015, the petitioner was directed to appear on 25.4.2015 and the order was passed on 30/4/2015. The above facts itself indicate that the petitioner was not given sufficient opportunity to raise objection. In that view of the matter, Ext.P4 is set aside and the following directions are issued:

1. The petitioner shall appear before the second respondent on 23.6.2015 with all relevant records.
2. Thereafter, the second respondent shall after hearing the petitioner, pass appropriate order within a further period of four months.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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