IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 17202 of 2015 (A)

PETITIONER :

MOBIL AB GLUE WORLD
TC. 38/2708, KILLIPPALAM, CHALAI
THIRUVANANTHAPURAM
REPRESENTED BY ITS PARTNER
SMT. SAFIYATHUN ADILA.

BY ADV. SRI.S.ANIL KUMAR (TRIVANDRUM)

RESPONDENT(S) :

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1. THE COMMERCIAL TAX OFFICER
   2ND CIRCLE, TAX TOWERS, KARAMANA
   THIRUVANANTHAPURAM-695 002.

2. THE AUTHORITY FOR CLARIFICATION
   U/S.94 OF THE KERALA VALUE ADDED TAX ACT
   REPRESENTED BY THE JOINT COMMISSIONER (GENERAL)
   OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
   TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM-695 002.

R1 & R2 BY SR. GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 17202 of 2015 (A)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1 :	**COPY OF NOTICE DATED 6-3-2015 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2009-2010.**
EXT. P2 :	**COPY OF REPLY DATED 17-4-2015.**
EXTY. P3 :	**COPY OF APPLICATION DATED 29-5-2015 FILED BEFORE THE 2ND RESPONDENT U/S.94.**
EXT. P4 :	**COPY OF LETTER DATED 1-6-2015 SUBMITTED TO THE 1ST RESPONDENT ON 16-4-2015.**
EXT. P5 :	**COPY OF ORDER DATED 27-5-2015 OF THE 1ST RESPONDENT FOR THE YEAR 2009-2010.**
EXT. P6 :	**COPY OF NOTICE DATED 27-5-2015 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2014-15.**

RESPONDENT(S)' EXHIBITS : NIL
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//TRUE COPY//

P.A. TO JUDGE

Mn

A. MUHAMED MUSTAQUE, J.

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W.P(C). No. 17202 of 2015

Dated this the 3rd day of July, 2015

J U D G M E N T

The petitioner impugning assessment under Section 25 for the year 2009-10, has approached this Court.

2. The petitioner was served with Ext.P1 notice for proposal to reopen the self assessment on 06.03.2015. Thereafter the petitioner made a request on 25.03.2015 for adjournment. This appears have been granted and the petitioner gave reply on 17.04.2015.

3. Petitioner's case is that, the assessment was completed without giving an opportunity of hearing, which was specifically sought for by him. It is further submitted that, personal hearing was necessary in this matter, as rate of tax applicable for the imported goods has to be established through hearing.

4. The learned Government Pleader submits that petitioner was specifically sought time on 17.04.2015 to produce sales bills on 27.04.2015. The above fact was endorsed in the reply given on 17.04.2015. It is further submitted that, the Manager of the petitioner appeared and he was heard on that day. It is based on that hearing, Ext.P5 was

issued on 27.05.2015.

5. The learned counsel for the petitioner points out that, they have made a specific request on 01.06.2015 again for personal hearing, because the posting on 27.04.2015 was not for a hearing in the matter, but was only to enable the petitioner to produce the Books of Accounts. This appears have been made after Ext.P5 order. Obviously for that reason it was not considered.

6. Thereafter the petitioner filed Ext.P3 clarification petition.

7. The nature of contention would show that, though petitioner was given opportunity nevertheless petitioner was heard on issue is doubtful. Petitioner's argument is that, the issue raised by the petitioner could be substantiated only with the assistance of the legal interpretation of the relevant provisions and therefore opportunity ought to have been given to raise the contentions. The Manager was present only for the purpose of producing Books of Accounts and not for hearing and there was no hearing of substantial nature as issue is related to the rate of tax applicable to the products. It is apparent that the person who was present before the authority was unable to convince the authority during hearing when he

was present on 27.04.2015. Perhaps, for these reasons, the authority might have decided to conclude the proceedings without further hearing and issued Ext.P5 order.

8. The learned Government Pleader points out that, since the petitioner has approached with clarification petition after the assessment order, there is a clear bar under Section 94 of the KVAT Act for making such clarification.

9. I am of the view that, interest of justice demands an opportunity to the petitioner. However taking note of the fact that, the issue is only relating to the rate of tax applicable. the petitioner should pay a portion of the amount now demanded without prejudice to the objection raised in Ext.P2. Accordingly, following directions are issued:

(i) The petitioner shall remit ₹4,00,000/- within two weeks.

(ii) Thereafter the petitioner shall appear before the respondent along with the receipt on 23.07.2015 at 11.a.m.

(iii) The matter shall be reheard by the respondent and pass appropriate orders after adverting to the legal arguments.

10. In view of setting aside the order, I do not find any impediment in considering the application for clarification. Therefore clarification petitioner shall be considered by the

authority independently within three months.

11. It is made clear that, if the petitioner fails to deposit the amount as above, the petitioner will not be entitled for the benefit of this judgment.

The writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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