IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 17642 of 2015 (E)

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**PETITIONER(S):**

A.J.ANNAKUTTY,
SRAMPICKAL, KADALIKAD.P.O., VAZHAKKULAM,
PIN-686 670.

BY ADVS.SRI.V.V.GEORGEKUTTY
SRI.AJI V.DEV

**RESPONDENT(S):**

1. INTELLIGENCE OFFICER (IB),
IDUKKI AT THODUPUZHA - 688 554.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, (KOTTAYAM),
ERNAKULAM - 682 015.

3. ASSISTANT COMMISSIONER
SPECIAL CIRCLE, PERUMBAVOOR, PIN-683 542.

4. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, MUVATTUPUZHA - 688 661.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-11-2015, ALONG WITH WPC NO.23567/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

## APPENDIX

**PETITIONER(S)' EXHIBITS :**

**EXT. P1-** TRUE COPY OF THE APPELLATE ORDER DATED 26.12.12 ISSUED BY THE 2ND RESPONDENT.

**EXT. P2-** TRUE COPY OF THE PENALTY NOTICE DATED 22.1.2015 ISSUED BY THE 1ST RESPONDENT.

**EXT. P3-** TRUE COPY OF THE REPLY DATED 9.2.15 FILED BY THE PETITIONER.

**EXT. P4-** TRUE COPY OF THE PENALTY ORDER DATED 24.2.2015 AND DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT.

**EXT. P5-** TRUE COPY OF THE RECTIFICATION PETITION DATED 25.3.2015 FILED BY THE PETITIONER.

**EXT. P6-** TRUE COPY OF THE REVISED ORDER U/S.66 DATED 24.3.2015 ISSUED BY THE 1ST RESPONDENT.

**EXT. P7-** TRUE COPY OF THE REVISED NOTICE/S.25(1) DATED 20.5.15 ISSUED BY THE 3RD RESPONDENT.

**EXT. P8-** TRUE COPY OF THE GOVERNMENT LETTER NO.28118/B1/2014/TD DATED 31/03/2015 ISSUED BY THE TAXES (B) DEPARTMENT, THIRUVANANTHAPURAM OBTAINED FROM THE 3RD RESPONDENT.

**EXT. P8(A)-** TRUE COPY OF THE LETTER NO.C2-19071/14/CT DATED 24/06/2015 ISSUED BY THE COMMISSIONER OBTAINED FROM THE 3RD RESPONDENT.

**EXT. P9-** TRUE COPY OF THE REVENUE RECOVERY NOTICES IN FORM 1 AND FORM 10 DATED 03/10/2015 ISSUED BY TE 4TH RESPONDENT.

**RESPONDENT(S)' EXHIBITS :**

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C) No.17642 of 2015**
**&**
**W.P.(C).No.23567 of 2015**

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Dated this the 25th day of November 2015

**JUDGMENT**

Since the issues involved in both these writ petitions is the same, they are taken up for consideration together and disposed by this common judgment.

In W.P.(C) No.17642/2015, the petitioner is aggrieved by Ext.P4 penalty order and Ext.P6 order, passed in a rectification application filed against the penalty order. The challenge in the writ petition against both these orders is essentially that there was no hearing granted to the petitioner, before passing the said orders and further there was no consideration on merits to support the findings in the said orders. In Ext.P4 order, that was first passed by the 1st respondent in a penalty proceedings, the respondent appears to have estimated the turnover of live chicken for the purposes of arriving at the suppressed turnover for the period in question, and then arrived at a tax liability corresponding to the suppressed turnover and imposed double that amount, by way of penalty. When the petitioner approached the 1st respondent with a rectification application, seeking the disclosure of the reasons that weighed with the 1st respondent for arriving at the conclusion in Ext.P4 order, the 1st respondent passed Ext.P6 revised order, under Section 66 of the KVAT Act, stating the very same contentions as in Ext.P4 order, but, reproducing the reply of the petitioner and also clarifying that the estimation of suppressed turnover was done, based on a local enquiry conducted by the 1st respondent. On a perusal of Exts.P4 and P6 orders, I am of the view that the same cannot be legally sustained since it is trite that in penalty proceedings, there is no scope for an estimation of suppressed turnover, by relying on material other than what was seized by the 1st respondent in a site inspection. This legal position has been clarified by this Court in the decision in **U.K.Monu Timbers v. State of Kerala [2012 (3) KHC 111].** Accordingly,I quash Exts.P4 and P6 orders and direct the 1st respondent to await the assessment orders pertaining to the petitioner for the assessment year in question, before initiating any penalty proceedings against the petitioner for the said year.

In W.P.(C).No. 23567/2015, the challenge is against Ext.P4 assessment order, on the ground that the assessment order was passed by the 2nd respondent relying entirely on the penalty order dated 24.03.2015, that is impugned in W.P.(C).No.17642/2015.

Inasmuch as I have quashed the said order in this judgment, I feel that the interests of justice will be served by directing the 2nd respondent to complete the assessment in relation to the petitioner under the KVAT Act for the assessment year 2005-06 afresh, after going through the returns filed by the petitioner and the books of accounts of the petitioner and resorting to an estimation of any suppressed turnover, after perusing the books of account and other material. To enable the 2nd respondent to do so, I quash Ext.P4 order and direct the petitioner to appear before the 2nd respondent with all relevant records at his office at 11 a.m. on 08.12.2015. The 2nd respondent shall proceed to pass final orders in the assessment for the assessment years 2005-06 under the KVAT Act, within a period of one month, after the date of hearing.

The writ petitions are disposed as above.

Sd/-
**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

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