IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

WP(C).No. 17984 of 2015 (W)

PETITIONER :

SRI.SHAJAN JOSEPH,
(MG: PARTNER), M/S BHARAT GLASS HOUSE,
DIVYA COMPLEX VYTILLA, COCHIN -682 019

BY ADV. SRI.K.J.VINCENT (MUNDAMVELI)

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

2. THE ASST: COMMISSIONER,
SPECIAL CIRCLE II, C.T.COMPLEX, COCHIN -682 015

3. THE INSPECTING ASST: COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, CIVIL STATION,
KIAKANAD, COCHIN -682 020

BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 17984 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1	**TRUE COPY OF THE ANNUAL RETURN FOR THE YEAR 2009-10 OF M/S BHARAT GLASS HOUSE, VYTILLA**
EXT.P2	**TRUE COPY OF ORDER NO IEC/VIII/6/09-10 DATED 10/2/14 OF THE INTELLIGENCE OFFICER, SQUAD NO.VIII, ERNAKULAM**
EXT.P3	**TRUE COPY OF REPRESENTATION BEFORE THE DEPUTY COMMISSIONER ERNAKULAM DATED 15/12/14 FILED BY THE PETITIONER**
EXT.P4	**TRUE COPY OF ORDER NO:RP/280/2014 DATED 20/3/15 OF THE DEPUUTY COMMISSIONER, DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM**
EXT.P5	**TRUE COPY PRE-ASST. NOTICE UNDER SECTION 25(1) OF THE ACT BEARING NO: 32070417355/09-10 DATED 19/1/15 OF THE AC SPECIAL CIRCLE -II ERNAKULAM**
EXT.P6	**TRUE COPY OF THE ADJOURNMENT REQUEST DATED 12/2/15 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT**
EXT.P7	**TRUE COPY OF THE ASSESSMENT ORDER NO 32070417355/09-10 DATED 7/3/15 OF THE AC SPECIAL CIRCLE-II, ERNAKULAM**
EXT.P8	**TRUE COPY OF THE PETITION DATED 12/5/15 U/S 66 OF THE KVAT ACT FILED BY THE PETITIONER SEEKING REVIEW OF THE ASSESSMENT ORDER**
EXT.P9	**TRUE COPY OF THE DEMAND NOTICE BEARING NO. A5.1435/15 DATED 1/6/15 OF THE THIRD RESPONDENT**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A. MUHAMED MUSTAQUE, J.

W.P.(C). No. 17984 of 2015

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Dated this the 24th day of June, 2015

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

The petitioner impugnes Ext.P7 assessment order. Two grounds have been canvased by the learned counsel for the petitioner. The first ground is that, the assessment order is based on a penalty proceedings, which has now been set aside by the appellate authority and remanded back. The second plea is that the petitioner has not given opportunity to produce books of accounts.

2. As far as the penalty proceedings is concerned, a reference is made in the impugned order in the absence of books of accounts, the assessing authority has no option but to conclude the assessment as proposed.

3. The petitioner's case is that, he was ready to produce the books of accounts, but no opportunity was given. The petitioner in fact in reply itself sought such an opportunity to produce the books of accounts.

4. The fact now remains that, the penalty proceedings have been remanded and it is for the petitioner to produce books

of accounts to repel the proposal against him. However it is to be noted that the assessment order being entirely different proceedings, the petitioner ought to have availed the opportunity by producing the books of accounts. The petitioner was not vigilant enough before the assessing authority while defending the matter. The petitioner asserted before the assessing authority that, they could annul the penalty proceedings by verification of accounts which he relied.

5. In the said circumstances, the incumbent on the petitioner to produce the books of accounts before the assessing authority instead of seeking time to produce it. Though substantial justice demand that the petitioner should be given an opportunity nevertheless latches on the petitioner cannot be left with impunity.

6. Therefore the assessment order is set aside and the following conditions are issued:

(i) The petitioner shall remit 25,000/- as cost. Cost shall be credited in the account of the Government (A/C No. 0040-00-1119109) within two weeks.

(ii) The petitioner shall produce receipt and books of accounts before the 2nd respondent on 15.07.2015. The assessment proceedings shall be completed within one month thereafter.

The writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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