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.19991 of 2015 (Y)

PETITIONER:

M/S.D.X.TRADERS,PANAYAPPILLY ARAKKAL,
KUNNATHERY,THAIKKATTUKARA P.O,ALUVA,
ERNAKULAM-683106,REPRSENTED BY ITS
MANAGING PARTNER P.M.ABOOBAKKER HAJI.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS

RESPONDENT'S:
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1. THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES,ALUVA,ERNAKULAM-683106.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWER,KARAMANA P.O,THIRUVANANTHAPURAM-695 002.

BY SENIOR GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

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

pk

WP(C).No.19991 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS:

EXBT.P1:TRUE COPY OF E-FILED ANNUAL RETURN DATED 04-11-2014 FOR THE YEAR 13-14.

EXT.P2:TRUE COPY OF THE ASSESSMENT ORDER DATED 28-05-2015 ISSUED BY 1ST RRESPONDENT TO THE PETITIONER.

EXT.P3:TRUE COPY OF FORM 13,13A AUDIT REPORT FOR THE YEAR 2013-14 E-FILED ON 02-06-15.

EXT.P4:TRUE COPY OF THE JUDGMENT IN O.T.REV. NO 49 OF 2014 DATED 25-09-2014 PRONOUNCED BY HON'BLE DIVISION BENCH OF THIS COURT.

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

pk

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.19991 of 2015

Dated this the 3rd day of July, 2015

J U D G M E N T

The petitioner impugning proceedings under Section 25(1) of the KVAT Act has approached this Court.

2. The assessment for the year 2013-14 has been reopened and completed as per Ext.P2 order. The authority found that, the petitioner has not filed audit report in Form 13 and 13A for the year 2013-14. The petitioner appeared before the authority and sought time on 14.05.2015. It appears that, the petitioner was given time. As seen from the records, the request was only for one week. That means, the time would have expired on 21.05.2015.

3. On account of non filing of the audit report, the assessment was completed on best of judgment. The petitioner submits that, the authority erred in concluding assessment based on the best of judgment due to non filing of audit report. The petitioner relies on the judgment of this Court produced as Ext.P4 to substantiate their submission. It is further submitted that, they have uploaded the audit report on 02.06.2015 as per Ext.P3. It is also submitted that, they received the order only after uploading the audit report.

4. The learned Government Pleader points out that, the petitioner was given sufficient opportunity in the matter and that, the petitioner having availed opportunity cannot now find fault with

the authority in completing the assessment.

5. I am of the view that, since the petitioner has uploaded the audit report on 02.06.2015, an opportunity should be given to them. It is seen from the records itself that, the petitioner sought for one week's time and the same was given to them. However, interest of justice demand substantial justice could be meted out to the petitioner, if the petitioner is given opportunity in the light of Ext.P3. However, latches on the part of the petitioner cannot be left with impunity.

6. Considering the facts and circumstances of the case, the petitioner shall remit an amount ₹5,000/- (Rupees Five thousand only) as cost in the account maintained by the Government under the head Other Receipts (Account No.0040-00-1119109) within ten days. The petitioner shall appear before the authority along with the receipt for the above payment on 14.07.2015. If the petitioner fails to remit the cost as stipulated above, the petitioner shall not be entitled for any benefit of this judgment.

This writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

AV