IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).No. 20651 of 2015 (F)

PETITIONER :

INTERPRISE INNOVATION
SECOND FLOOR, XI 105B, PADAMUGAL
KAKKANAD, ERNAKULAM-682030
REPRESENTED BY ITS MANAGING
PARTNER SRI.SANO JACOB, AGED 34 YEARS

BY ADV. SRI.K.S.HARIHARAN NAIR

RESPONDENT :

THE COMMERCIAL TAX OFFICER,
SECOND CIRCLE, KALAMASSERRY, KAKKANAD-682030.

BY SENIOR GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 20651 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : **TRUE COPY OF THE ADJOURNMENT LETTER DT.23-2-2015.**

EXT.P2 : **TRUE COPY OF THE REPLY DT.24-3-2015 ALONG WITH THE EXEMPTION CLAIM FORM 43.**

EXT.P3 : **TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY THE RESPONDENT DT. 19-3-2015.**

EXT.P4 : **TRUE COPY OF THE INFORMATION ISSUED BY THE RESPONDENT DT.15-6-2015.**

EXT.P5 : **TRUE COPY OF THE RECTIFICATION PETITION DT.24-6-2015.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.20651 of 2015

Dated this the 9th day of July, 2015

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

The petitioner, a dealer registered under the KVAT Act, has approached this Court challenging Ext.P3 assessment order for the year 2012-13.

2. In the proposal it has been pointed out that, the self assessment made by the petitioner suffers from defect and petitioner was requested to submit their objections on proposal dated 17.01.2015. The petitioner gave a reply as per Ext.P5 seeking two weeks time. Thereafter, the petitioner did no furnish any details or objections within the time sought by the petitioner. Thus the proceedings have been concluded by Ext.P3 on 19.03.2015. It appears that, the petitioner filed a reply on 24.03.2015 after the conclusion of the proceedings. The reason for the delay, according to the petitioner is that, there was delay in obtaining declaration for exemption from the customers. The exemption in fact has to be claimed in Form 43. By the time customers furnished declaration, proceedings have been concluded.

3. The petitioner therefore submits that, substantial opportunity should be given to them to place all the materials and that, the authority may be directed to reconsider the matter.

4. As the matter stands now, the proceedings have been concluded in the absence of materials or reply placed by the

petitioner. The petitioner could have given the reason for delay in filing the reply as delay in obtaining Form 43 from the customers. Instead, they sought only two weeks time. It is apparent that, the same was granted. Therefore, it was on account of latches on the part of the petitioner, the authority was constrained to conclude the proceedings. However, substantial justice demand a reconsideration of the matter in the light of Form 43 now obtained by the petitioner. The latches can be remedied by imposing cost on the petitioner. Accordingly, this writ petition is disposed of with the following directions :

1. The impugned order is set aside.
2. The petitioner shall remit an amount ₹25,000/- (Rupees Twenty five thousand only) as cost in the account maintained by the Government under the head Other Receipts (Account No.0040-00-1119109) within two weeks from today.
3. The petitioner shall appear with all materials and reply before the authority along with a copy of the receipt for payment of cost, on 04.08.2015 at 11.00 a.m.
4. Based on the above materials, entire proceedings shall be concluded within a further period of one month.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV