IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 21976 of 2015 (V)

PETITIONER(S):

M/S. AGSONS,
1/283A, KOTTEKAD, KOTTUR P.O.,
THRISSUR, REPRESENTED BY ITS
PARTNER JUSTIN GEORGE.

BY ADVS.SRI.HARISANKAR V. MENON,
SMT.MEERA V.MENON.

RESPONDENT(S):

THE COMMERCIAL TAX OFFICER,
3RD CIRCLE, THRISSUR-680 001.

BY SR. GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

WP(C).No. 21976 of 2015 (V)

<u>APPENDIX</u>

<u>PETITIONER'S EXHIBITS</u>:-

EXHIBIT-P1-	**TRUE COPY OF THE NOTICE ISSUED BY THE RESPONDENT DATED 10/10/2014.**
EXHIBIT-P1(A)-	**TRUE COPY OF THE NOTICE ISSUED BY THE RESPONDENT DATED 10/10/2014.**
EXHIBIT-P2-	**TRUE COPY OF THE ORDER ISSUED BY THE RESPONDENT DATED 25/08/2015.**
EXHIBIT-P2(A)-	**TRUE COPY OF THE ORDER ISSUED BY THE RESPONDENT DATED 25/06/2015.**

<u>RESPONDENT'S EXHIBITS</u>:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.21976 of 2015

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Dated this the 27th day of July, 2015

JUDGMENT

The petitioner, challenging the assessment years 2010-2011 and 2011-2012 under Section 25(1) of the Kerala Value Added Tax Act (for short, the 'Act'), have approached this Court.

2. The core issue in this writ petition is regarding the opportunity provided to the petitioner.

3. The Authority proceeded for assessment in terms of Section 25(1) of the Act on account of difference in the return comparing to the interstate purchase made by the petitioner. The difference has been noted down by the Authority stating that the petitioner have not accounted the entire interstate purchase in the assessment.

4. In the assessment orders, it is noted that the petitioner have not raised any written objection. But it is also noted that at the time of production of books of accounts by the dealer, they have stated that the purchase as reflected in the notice was not their purchase and they have not made such a huge purchase.

The Assessing Authority noted that the petitioner did not produce any purchase bills and sales bills for verification and therefore, it has to be concluded that those purchases were effected by the petitioner themselves. Thus, the assessment has been made by including turnover of unaccounted purchase.

5. The question is whether the petitioner have been given sufficient opportunity. The petitioner denied having made such purchase. The petitioner also at the same time state that they were not provided with the details. It appears that the petitioner consciously made certain affirmation based on the quantification projected in the notice as to the denial of the purchase. Nevertheless, it is not seen whether the petitioner have been provided with any details of such bills of purchase. The petitioner also not seen raised any objection.

6. However, in this case, the petitioner denied the purchase itself. In the absence of assimilation of these factual issue, it cannot be concluded that the Authority has validly concluded the proceedings complying with the formalities of principles of natural justice. However, the petitioner having put to

notice of differences, necessarily, they should have been more alert and vigilant in defending the proceedings.

Therefore, this Court while taking the view that the matter requires reconsideration, the petitioner should pay portion of the amount demanded. The petitioner shall deposit Rs.1.5 lakhs within one month from today. The matter shall be reconsidered by the Authority if the petitioner deposits the above amount. Thus, the following directions are issued:

i. The impugned order is set aside on condition as above.

ii. The petitioner shall appear before the Authority on 1.9.2015 at 11 a.m.

iii. The details of the difference shall be provided to the petitioner on that day or subsequent day.

iv. Thereafter, the petitioner shall also raise written objection within the time given by the Authority.

v. Thereafter, after affording a personal hearing to the petitioner, appropriate order shall be passed within a further period of two months.

vi. However, it is made clear that if the petitioner fails to deposit the above amount, the petitioner will not be entitled for the benefit of this judgment.

The writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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