IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 22184 of 2015 (W)

PETITIONER:

M/S.DEVI HOSPITALS PVT. LTD
TRIPUNITHURA,
REPRESENTED BY ITS MANAGING DIRECTOR SRI. MADHAVAN NAMBALAT

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD

RESPONDENT:

COMMERCIAL TAX OFFICER
1ST CIRCLE, DEPARTMENT OF COMMERCIAL TAXES
TRIPUNITHURA 682 301

BY SENIOR GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vmr.

WP(C).No. 22184 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 - A TRUE COPY OF THE ASSESSMENT ORDER DATED 30/6/2015.

EXHIBIT P2 - A TRUE COPY OF THE CERTIFICATES.

RESPONDENT(S)' EXHIBITS : NIL.

/TRUE COPY/

P.S.TO JUDGE

vmr.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.22184 of 2015

Dated this the 23rd day of July, 2015

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

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

2. The main grievance of the petitioner is that, sufficient opportunity was not given to the petitioner and that, the composite notice is bad in law.

3. The assessment order was issued on 30.06.2015. It appears that the notice has been issued on 06.06.2015 and the same was received by the petitioner on 19.06.2015. The petitioner was directed to appear on 25.06.2015. It is apparent that the petitioner did not appear and not sought any time before the assessing authority. Accordingly, the assessing authority concluded the proceedings and issued the impugned order.

4. The learned counsel for the petitioner submits that, the assessment has been hurriedly concluded without giving sufficient opportunity to the petitioner and that, it is mandate that minimum two weeks time should be given to the petitioner by the respondents. It is further submitted that after the proposal and hearing objections, necessarily the petitioner shall be put to notice regarding the proposed assessment and without giving such an opportunity, the assessment itself is bad and is liable to be set

aside.

5. It is to be noted that, the petitioner has not chosen to appear on the date on which the matter was posted for hearing. No doubt that, the proceedings have been concluded without giving any opportunity to the petitioner. However, the assessing authority cannot be found fault with the petitioner for the simple reason that he has not chosen to appear on the posting date for hearing. Essentially, the petitioner has to appear before the authority and seek for an opportunity.

6. Considering the facts and circumstances this Court is of the view that, interest of justice demands rehearing of the matter. However, latches on the part of the petitioner cannot be left with impunity. Therefore, this writ petition is disposed of with the following directions :

1. The impugned order is set aside.
2. The petitioner shall deposit an amount of ₹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.
3. The petitioner shall also appear before the authority on 10.08.2015 at 11.00 a.m. with all details and also along with the receipt for above payment.

4. Thereafter, after giving sufficient opportunity to the petitioner in accordance with law, the assessing authority shall conclude the proceedings.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV