IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 22535 of 2015 (N)

PETITIONER:

M/S. ABB INDIA LIMITED,
NOEL FOCUS, 6TH FLOOR,
SEA PORT AIRPORT ROAD,
KAKKANAD, KOCHI, REPRESENTED BY ITS
ASSISTANT VICE PRESIDENT MR.S.JOTHI PRAKASH.

BY ADV. SMT.K.LATHA

RESPONDENT(S):
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1. THE STATE OF KERALA,
   REPRESENTED BY CHIEF SECRETARY,
   SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. ASSISTANT COMMISSIONER (WORKS CONTRACT)
   O/O. THE DEPUTY COMMISSIONER,
   COMMERCIAL TAXES DEPARTMENT,
   ERNAKULAM, KOCHI-682018.

BY SENIOR GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 22535 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT. P1 : **THE TRUE COPY OF THIS NOTICE DATED 24-2-2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.**

EXT. P2 : **THE TRUE COPY OF THE REPLY TO THIS P1 PRE ASSESSMENT NOTICE FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT. P3 : **THE TRUE COPY OF THE ASSESSMENT ORDER NO.32072097464/2011-2012 DATED 2-5-2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.**

EXT. P4 : **THE TRUE COPY OF THE RECTIFICATION APPLICATION DATED 22ND MAY 2015 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT AGAINST THE P3 ASSESSMENT ORDER.**

EXT. P5 : **THE TRUE COPY OF THE RECTIFICATION ORDER NO.32072097464/2011-2012 DATED 30-5-2015 ISSUED BY SECOND RESPONDENT TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.22535 of 2015

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Dated this the 5th day of August, 2015

JUDGMENT

The petitioner-Company have approached this Court challenging Ext.P3 assessment order. They have claimed exemption for a turnover of Rs.34,57,507.90/- as export sale. The Authority noted that the petitioner have not produced bill of lading, statement etc. Therefore, the turnover was assessed at 12.5%. The petitioner submits that they have produced the entire records and the Assessing Authority did not advert to the records for rejecting the same. It is to be noted that the petitioner have filed Rectification Application. In the Rectification Application, the petitioner have raised two contentions:

i. Full credit note given for the TDS paid eventhough copies of Form 20F produced.

ii. Labour work exemption allowed only @ 50% eventhough copies of invoices, agreements etc. were produced.

2. The petitioner have no case that the Authority erred in noting the supporting documents when the application for rectification was filed.

3. The petitioner relies on the judgment of this Court in **Razia Greens v. State of Kerala [2000 (8) KTR 55 (Ker)],** wherein it was held that reasons be given in support of an order is a basic principle of natural justice. The petitioner's case is that no reason has been stated for rejecting the exemption.

4. It is to be noted that the petitioner has remedy against the order. The petitioner is free to raise all the contentions as above.

Therefore, in view of the clear finding that the petitioner have failed to produce the documents, there is no legal infirmity with the order passed. This Court need not invoke the power under Article 226 of the Constitution in such circumstance. The petitioner is free to challenge the order by availing alternative remedy.

The writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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