IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).NO. 25073 OF 2015 (H)

PETITIONER(S):

M/S.ST.ANTONY'S MOTORS INDIA LTD.
DOOR NO.111/178, THANIKELPADY, VADAVATHOOR P.O.
KOTTAYAM DISTRICT-691010
REPRESENTED BY ITS MANAGING DIRECTO0R
SRI. MEHAR REYNOLD.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
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1. ASSISTANT COMMISSIONER (KVAT),
SPECIAL CIRCLE, COMMERCIAL TAXES, KOTTAYAM-686002.

2. DEPUTY TAHSILDAR (REVENUE RECOVGERY)
TALUK OFFICE, KOTTAYAM-686002.

3. STATE OF KERALA
REPRESENTED BY SECRETARY TO TAXES DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 25073 OF 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF ANNUAL RETURN FOR 2007-08 SUBMITTED BY PETITIONER, BEFORE 2ND RESPONDENT, CONCEDING ENTIRE TURNOVER UNDER THE KVAT ACT, ALONG WITH FORM NO.53 CLOSING STOCK INVENTORY.

EXHIBIT P2: COPY OF STATUTORY AUDIT REPORT IN FORM NO.13 AND 13A SUBMITTED FOR 2007-08, U/S. 42 OF THE ACT.

EXHIBIT P2(A): COPY OF AUDITED FINANCIAL STATEMENT SUBMITTED U/S. 42 OF THE KVAT ACT, SUBMITTED ALONG WITH EXT.P2 AND AUDITOR'S REMARK FOR THE YEAR 2007-08.

EXHIBIT P2(B): COPY OF RELEVANT PAGES OF INCOME TAX RETURN FOR THE ASSESSMENT YEAR 2008-09, SHOWING THE INCOME TAX DEDUCTED BY CERTAIN PRINCIPALS FOR THE MISCELLANEOUS INCOME AND INCENTIVE ALLOWED TO PETITIONER.

EXHIBIT P3: COPY OF NOTICE DATED 17.1.2015 ISSUED TO PETITIONER BY IST RESPONDENT, DIRECTING TO PRODUCE BOOKS OF ACCOUNTS FOR THE YEAR 2007-08.

EXHIBIT P4: COPY OF NOTICE DATED 6.3.2015 U/S.25 FOR 2007-08, ISSUED TO PETITIONER ON 20.3.2015, BY IST RESPONDENT, PROPOSING TO ASSESS MISCELLANEOUS INCOMES AND INCENTIVES REFLECTED IN EXT.P2(B).

EXHIBIT P5: COPY OF LETTER DATED 26.3.2015, SENT BY REGISTERED POST TO IST RESPONDENT AGAINST EXT.P4 NOTICE.

EXHIBIT P5(A): COPY OF POSTAL ACKNOWLEDGMENT FOR DELIVERY OF EXT.P5 LETTER ON 27.3.2015 TO IST RESPONDENT.

EXHIBIT P6: COPY OF ORDER DATED 31.3.2015 FOR THE YEAR 2007-08 COMPLETED U/S.25 OF KVAT ACT BY IST RESPONDENT, WITHOUT CONSIDERING EXT.P5 LETTER SUBMITTED BY PETITIONER.

EXHIBIT P7: COPY OF REVENUE RECOVERY NOTICE IN FORM NO.1 DATED 22.07.2015 SERVED TO PETITIONER BY 2ND RESPONDENT ON 03.08.2015, PURSUANT TO EXT.P6 DEMAND

EXHIBIT P7(A): COPY OF REVENUE RECOVERY NOTICE IN FORM NO.10 DATED 22.07.2015, SERVED TO PETITIONER BY 2ND RESPONDENT ON 03.08.2015, PURSUANT TO EXT.P6 DEMAND

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.25073 OF 2015

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Dated this the 3rd day of September, 2015

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

The challenge in the writ petition is against Ext.P6 assessment order passed in respect of the petitioner for the assessment year 2007-2008. The main ground urged in the writ petition, in its challenge against Ext.P6 order, is that, while the petitioner was informed of the hearing of the case by Ext.P4 notice and the personal hearing was fixed on 26.03.2015, the petitioner had by Ext.P5 communication dated 26.03.2015 approached the 1st respondent and informed him that inasmuch as the auditors were busy in connection with the year ending audit, the petitioner required two weeks time to file a detailed reply to the notice served on him. It would appear that, although, the said letter of the petitioner was received by the 1st respondent on the same date, the 1st respondent proceeded to decide the matter without waiting for a reply from the petitioner and passed Ext.P6 order which is impugned in the writ petition.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, the 1st respondent was directed to re-consider the assessment for the year 2007-2008 in respect of the petitioner, by a judgment of this Court in W.P.(C).No.560/2010. While disposing the said writ petition, this Court had directed the assessing authority to consider the contents of a revised audit report, along with all other relevant records, and to finalise the matter in accordance with law after giving the assessee an opportunity of hearing. It is thereafter that the 1st respondent proceeded to pass Ext.P6 order without waiting for the reply of the petitioner. In my view, there was no necessity for the 1st respondent to act with undue haste in the matter of finalising an assessment of the petitioner. Accordingly, I quash Ext.P6 order and direct the 1st respondent to complete the assessment in relation to the petitioner, for the assessment year 2007-2008, afresh after considering the reply of the petitioner to the proposed assessment. To enable the 1st respondent to do this, I direct the petitioner to appear before the 1st respondent at his office at 11 am on 10.09.2015, together with any written submissions that he has to submit in connection with the assessment proceedings. The 1st respondent shall thereafter pass orders in the matter, as directed, within a period of one month from

the date of receipt of a copy of this judgment. The petitioner shall produce a copy of the writ petition along with a copy of this judgment before the 1st respondent for further action.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/