IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 26110 of 2014 (K)

PETITIONER :

NOOR MOHAMMED S.A., AGED 44 YEARS,
S/O. S.ABDULLA, RESIDING AT CHEMBARIKKA HOUSE,
CHEMBARIKKA KALLAMVALAP ROAD, CHANDRAGIRI P.O.,
KASARAGOD-671 317.

BY ADVS.SRI.R.O.MUHAMED SHEMEEM
SMT.NASEEHA BEEGUM P.S.
SRI.T.PABDUL HAMEED

RESPONDENTS :
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1. THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAX OFFICE, KVAT CIRCLE-III,
IS PRESS ROAD, ERNAKULAM-682 031.

2. THE INSPECTING ASSISTANT COMMISSIONER OF COMMERCIAL TAXES,
CIVIL STATION, KAKKANAD, ERNAKULAM-682 030.

3. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES,
TAX COMPLEX, RAVIPURAM, ERNAKULAM-682 031.

R1 TO R3 BY GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

bp

WP(C).No. 26110 of 2014 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : **COPY OF REPLY DTD.30.8.2014 SUBMITTED BY THE PETITIONER TO 1ST RESPONDENT.**

P2 : **COPY OF THE IMPUGNED ORDER DTD.28.8.2014 OF 1ST RESPONDENT.**

P3 : **COPY OF THE DEMAND NOTICE DTD.30.8.2014 OF 1ST RESPONDENT.**

P4 : **COPY OF THE RENT AGREEMENT DTD.1.6.2010.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.26110 of 2014

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Dated this the 5th day of January, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P2 assessment order and Ext.P3 demand notice that was served on him under the Kerala Value Added Tax Act in connection with an alleged business that he conducted during the assessment year 2008-2009. In the writ petition, it is the specific case of the petitioner that he had not carried on business in the premises during the period 2008-2009, and further, he was not served with any valid notice demanding tax for the said period to which he could prefer a reply. It is his specific contention that Ext.P2 assessment order has been passed without considering relevant aspects and without affording him an opportunity of hearing.

2. A statement has been filed by the 1st respondent wherein the sequence of events leading to the passing of Ext.P2 assessment order has been narrated. It is in particular pointed out that a notice had been issued to one Mohamed Faiz, who had preferred a reply to the notice stating that he was not conducting business in the said premises during the said year and that during the said period it was the petitioner who was in occupation of the said

premises. The statement reveals that, on the basis of the reply obtained from Sri.Mohamed Faiz, the assessment was completed as against the petitioner on the assumption that he was doing business in the said premises. It is also pointed out that, although pursuant to the reply from Sri.Mohamed Faiz, a copy of the notice was also served on the petitioner and the petitioner had replied to the same denying the conduct of any business during the said assessment year, the respondents could not conduct a proper investigation prior to the passing of Ext.P2 assessment order.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that insofar as the respondents have not been able to establish that the petitioner did carry on business in the premises in question during the assessment year 2008-2009, Ext.P2 order which appears to have been passed on an assumption that the petitioner had carried on business, cannot be legally sustained. It is trite that in tax matters, the burden of proof to establish that the taxable event has occurred is on the revenue. In that view of the matter, I deem it necessary in the interests of justice to direct the respondents to issue a fresh notice to the petitioner outlining the proposals with regard to the levy of tax on the petitioner under the Kerala Value Added Tax Act. The petitioner, on receipt of the said notice shall

file a detailed reply raising objections, if any, to the said proposal. Thereafter, the 1st respondent shall proceed to consider the matter afresh after affording the petitioner an opportunity of being heard. The 1st respondent shall pass a fresh assessment order for the assessment year 2008-2009, within a period of three months from the date of receipt of a copy of this judgment. To enable him to do that, Ext.P2 assessment order and Ext.P3 demand notice are quashed. The petitioner shall produce a copy of the judgment as also a copy of the writ petition before the 1st respondent to enable him to pass fresh orders in the matter.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/