IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).NO. 26027 OF 2015 (C)

PETITIONER(S):

KAIRALY WELFARE AND CHARITABLE WOMENS SOCIETY
MANIKKINAR P.O., KOTHAMANGALM
ERNAKULAM DISTRICT
REPRESENTED BY ITS SECRETARY, LOVELY SALIM

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

RESPONDENT(S):

THE COMMERCIAL TAX OFFICER
KOTHAMANGALM

BY GOVERNMENT PLEADER SRI.LIJU V.STEPEHN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 26027 OF 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: COPY OF ASSESSMENT ORDER ISSUED BY THE RESPONDENT DATED 05.08.2009

P2: COPY OF ORDER ISSUED BY THE DEPUTY COMMISSIONER (APPEALS), ERNAKULAM DATED 30.12.2010

P3: COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE RESPONDENT DATED 09.04.2015

P4: COPY OF LETTER ISSUED BY THE RESPONDENT TO THE PETITIONER DATED 25.06.2015

P5: COPY OF ASSESSMENT ORDER ISSUED BY THE 2ND RESPONDENT DATED 20.06.2015

P6:COPY OF APPLICATION SUBMITTED BY THE PETITIONER DATED 03.07.2015

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.26027 of 2015

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Dated this the 31st day of August, 2015

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

The petitioner was assessed under the Kerala Value Added Tax Act for the assessment year 2006-2007. Aggrieved by the said assessment, he preferred an appeal before the appellate authority on two grounds namely, that the benefit of reduced rate of 4% tax had not been granted to the petitioner, and further, that input credit on purchases had not been granted to the petitioner for the said assessment year. By Ext.P2 order, the appellate authority directed the respondent to consider the case of the petitioner afresh, both in respect of the contention regarding reduced rate of tax as also with regard to the claim for input credit. In Ext.P5 order, that was subsequently passed by the respondent, while the respondent has taken note of the contention with regard to reduced rate of tax, the claim of the petitioner for input credit on purchases is not seen considered. Ext.P5 order also does not disclose as to whether the petitioner was heard before passing the said order. It is the specific case of the petitioner that he was not heard, and that, therefore, Ext.P5 order is vitiated by a non-compliance with the rules of natural justice as well.

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

3. On a consideration of the facts and circumstances of the case and also the submissions made across the bar, and taking note of the fact that while passing Ext.P5 order, the respondent has not complied with the specific directions given by the the appellate authority in Ext.P2 appellate order, I quash Ext.P5 order and direct the respondent to reconsider the matter afresh in the light of the specific direction given in Ext.P2 order of the appellate authority. I make it clear that, before passing orders as directed, the respondent shall also afford the petitioner an opportunity of being heard. The respondent shall pass orders after hearing the petitioner within a period of one month from the date of receipt of copy of the judgment.

The petitioner shall produce a copy of the writ petition, along with a copy of this judgment, before the respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns