IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 27510 of 2015 (K)

PETITIONER:

M/S HCL INFO SYSTEMS LTD.
4/84A, MAROTTICHUVADU JUNCTION,
EDAPALLY,KOCHI
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR.CYRIAC JOSEPH.

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

RESPONDENTS:
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1. THE ASSISTANT COMMISSIONER
   COMMERCIAL TAXS, SPECIAL CIRCLE 11,
   ERNAKULAM 682 016.

2. COLLECTOR/AUTHORISED OFFICER
   COMMERCIAL TAX OFFICER, REVENUE RECOVERY
   KAKKANAD 682 030.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 27510 of 2015 (K)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1. COPY OF THE SAID NOTICE DATED 9.4.15 SERVED ON THE PETITIONER ON 13.4.15.

EXHIBIT P2. COPY OF THE REPLY DATED 17.6.15 FURNISHED ON 24.7.15.

EXHIBIT P3. COPY OF THE REVENUE RECOVERY NOTICE DATED 13.8.15 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P4. COPY OF THE ASSESSMENT ORDER DATED 20.6.15.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.27510 of 2015

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Dated this the 29th day of October 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 order of assessment passed in relation to the petitioner under the KVAT Act for the assessment year 2012-2013. The grievance of the petitioner in the writ petition is essentially that while passing Ext.P4 order, the 1st respondent did not consider the material that was produced by the petitioner before him. It is the contention of the petitioner that Ext.P4 order is vitiated by a patent non-application of mind, in that, the material produced by the petitioner was not considered before passing the order.

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

3. On a consideration of the facts and circumstances of the case and the submissions made at the Bar, I find that in Ext.P4 order, the 1st respondent specifically refers to the reply that is filed by the petitioner on 17.06.2015 and extracts the contents of the

reply. There is no reference, however, to the additional information that the petitioner is stated to have filed before the 1st respondent on 24.07.2015. On a query with the learned Government Pleader as to why this was so, it was pointed out by the learned Government Pleader, on instructions, that Ext.P4 order, which is seen passed on 20.06.2015, was communicated to the authorised representative of the petitioner, on 01.07.2015, well before the additional material was filed before the 1st respondent by the petitioner. Taking note of the said contention, I am of the view that inasmuch as the additional material that was furnished by the petitioner was subsequent to the date of communication of Ext.P4 order on the petitioner, the 1st respondent could not have considered the said material and hence, the non-consideration of the said material cannot be a reason to find Ext.P4 order to be vitiated by a non-application of mind by the 1st respondent. Accordingly, I dismiss the writ petition in its challenge against Ext.P4 assessment order and relegate the petitioner to his alternate remedy of filing an appeal before the appellate authority, under the KVAT Act.

Counsel for the petitioner seeks some time to approach the appellate authority under the KVAT Act. Taking note of the said submission of counsel for the petitioner, I direct that the recovery steps for recovery of amounts confirmed against the petitioner by Ext.P4 order, shall be kept in abeyance for a period of one month so as to enable the petitioner to pursue his alternative remedy before the appellate authority.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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