IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 27531 of 2015 (N)

PETITIONER(S):

M/S. WELDING WORLD TRADING CO AGED 49 YEARS
37/3598, COLTON HOUSE, BANK ROAD
KALOOR, COCHIN 682 017, REPRESENTED BY ITS PROPRIEOTR
MR. CARLTON OLIVER.

BY ADVS.SRI.A.KUMAR
SMTG.MINI(1748)

RESPONDENT(S):

COMMERCIAL TAX OFFICER
KVAT CIRCLE 1, KALAMASSERY @ CIVIL STATION
KAKKANAD 682 030.

R BY GOVERNMENT PLEADER, SRI. LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 27531 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. **COPY OF THE NOTICE DATED 12.1.10.**

EXHIBIT P2. **COPY OF THE LETTER DATED 28.11.13.**

EXHIBIT P3. **COPY OF THE PENALTY ORDER DATED 20.11.14.**

EXHIBIT P4. **COPY OF THE JUDGMENT IN WPC 15345/15 DATED 1.6.15.**

EXHIBIT P5. **COPY OF THE ORDER IN IA 12543/15 DATED 9.9.15.**

EXHIBIT P6. **COPY OF THE BANK GUARANTEE DATED 13.8.15.**

EXHIBIT P7. **COPY OF THE LETTER DATED 20.7.15.**

EXHIBIT P8. **COPY OF THE ASSESSMENT ORDER DATED 31.7.15.**

EXHIBIT P9. **COPY OF THE ANNUAL RETURNS FOR THE YEAR 2009-2010.**

EXHIBIT P10. **COPY OF THE AUDIT REPORT DATED 30.9.10.**

RESPONDENT'S EXHIBITS:-
-------------------------------------- **NIL**

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 27531 of 2015
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Dated this the 23rd day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P8 order passed by the respondent, finalising an assessment of the petitioner under the Kerala Value Added Tax Act, hereinafter referred to as the "KVAT Act", for the period from April 2009 to March 2010. The challenge in the writ petition against Ext.P8 order is premised primarily on the contention that the petitioner was not given an effective opportunity of filing his objections against the proposals of the respondent and further that he was not heard before finalising the assessment.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondent.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find from Ext.P8 order that the notice under Section 25(1) of the KVAT Act was served on the dealer only on 16.07.2015. The notice itself directs the petitioner to file objections, if any, to the proposal of the respondent, within seven days of receipt of the notice. Thereafter,

it is stated that the opportunity of hearing would be on or before 17.07.2015. Considering that the notice was served only on 16.07.2015, it is obvious that the period of seven days, which was given in the notice for filing the objections could not have been completed by 17.07.2015, which was the date given for hearing. It is not in dispute that the petitioner filed a reply on 22.07.2015. However, a consideration of the reply is not seen reflected in Ext.P8 order. The respondent appears to have proceeded to finalise the assessment with undue haste, which in my view, cannot be justified on the facts of the instant case. Thus, I quash, Ext.P8 order and direct the respondent to complete the assessment, in relation to the petitioner for the assessment year 2009-10, within two months from the date of receipt of a copy of this judgment. To enable the respondent to do so, I direct the petitioner to appear before the respondent at 11.AM on 01.10.2015, with all supporting documents to substantiate his contentions on merits.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das