IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).NO. 27871 OF 2015 (H)

PETITIONER(S)/PETITIONER:

SIJOMON JOSE
M/S. COCHIN DISTRIBUTORS, PEZHUMKAVALA, KATTAPPANA
IDUKKI DISTRICT-686508.

BY ADVS.SRI.P.N.DAMODARAN NAMBOODIRI
SRI.P.UNNIKRISHNAN (THRISSUR)

RESPONDENT(S)/RESPONDENTS:

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1. THE COMMERCIAL TAX OFFICER
DEPARTMENT OF COMMERCIAL TAXES
IDUKKI AT KATTAPPANA-685515.

2. INSPECTING ASSISTANT COMMISSIONER
DEPARTMENT OF COMMERCIAL TAXES
IDUKKI AT KATTAPPANA-685515.

3. COMMISSIONER OF COMMERCIAL TAXES
DEPARTMENT OF COMMERCIAL TAXES, TAX TOWERS, KARAMANA
THIRUVANANTHAPURAM-695002.

BY GOVERNMENT PLEADER SRI LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 27871 OF 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- TRUE COPY OF THE ANNUAL RETURN NO. 32060611708/2013-14 DATED 29-07-2015 FOR THE YEAR 2013-14 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P2- TRUE COPY OF THE NOTICE OF FORM 17 NO. 32060611708/2013-14 DATED 20-07-2015 FOR THE YEAR 2014-15, ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P3- TRUE COPY OF THE PROPOSAL NOTICE NO. 32060611708/2013-14 DATED 20-07-2015 FOR THE YEAR 2013-14, ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P4- TRUE COPY OF THE ADJOURNMENT REQUEST AND PERSONAL HEARING REQUEST FILED BY THE THE PETITIONER.

EXHIBIT P5- TRUE COPY OF THE MEDICAL CERTIFICATE DATED 15-08-2015 ISSUED BY THE DOCTOR.

EXHIBIT P6- TRUE COPY OF THE ASSESSMENT ORDER NO.32060611708/2013-14 DATED 25-08-2015 FOR THE YEAR 2013-14 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P7- TRUE COPY OF THE CIRCULAR BEARING NO.C1-45370/09/CT DATED 16-11-2009, ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P8- TRUE COPY OF THE JUDGMENT IN WRIT PETITION BEARING WPC NO. 14332/2010 DATED 02-06-2010 IN SUZION INFRASTRUCTURE SERVICE LTD. V/S COMMERCIAL TAX OFFICER.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.27871 OF 2015

Dated this the 22nd day of September, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P6 order passed by the 1st respondent assessing authority under the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act') assessing the turnover of the petitioner for the assessment year 2013-2014. The challenge in the writ petition is premised primarily on the contention that Ext.P6 order was passed without hearing the petitioner. It is the contention of the petitioner, therefore, that there has been a non-compliance with the rules of natural justice, and hence, Ext.P6 order is vitiated to that extent.

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 in Ext.P6 order, the 1st respondent observes that although a proposal under Section 25 (1) of the KVAT Act was issued and served on the petitioner

granting him seven days time for filing objection, if any, to the proposal and also granting him an opportunity of personal hearing, the petitioner filed an adjournment application requesting for a further 15 days time to file a detailed reply and for personal hearing and the same was also allowed. It is stated that, the petitioner did not file any reply or appear for personal hearing and it is under those circumstances Ext.P6 order came to be passed without hearing the petitioner. While counsel for the petitioner would submit that, the petitioner was laid up and it was therefore that he could not attend the hearing on the date stipulated, I also note in this case that Ext.P2 notice in Form No.17 calling upon the petitioner to produce accounts, documents and registers in accordance with Rule 38 of the KVAT Rules, was dated 20.07.2015 and it was on the same day that the notice under Section 25 (1) of the KVAT Act (Ext.P3) was issued to the petitioner proposing an assessment on best judgment basis. In this connection, it is relevant to notice the provisions of Rule 38 of the KVAT Rules 2005, which deal with the manner in which best judgment assessment is to be completed by an Assessing Officer, who proposes to proceed against an assessee in terms of Section 25(1) of the KVAT Act . The said provision reads as under:

"**38. Best Judgment Assessment**:- (1) Where an assessing authority resorting to best judgment assessment under Section 22 or section 23 or section 24 deems it necessary to verify the books of accounts of the assessee, such authority may serve on the dealer a notice in Form No.17 calling upon him to produce the books of accounts or other records or evidences, if any, to prove his turnover and tax liability, and also the correctness of the stock statement, goods or the turnover reported or the input tax credit or the refund claimed, at a time and place to be specified in the notice and shall scrutinize them, if produced, as specified in the notice.

(2) Where the dealer proves the correctness of the above claims with reference to the records produced, the assessing authority shall not proceed to complete best judment assessment.

(3) Where the dealer fails to prove the correctness of the turnover, sock etc, as above, the assessing authority the assessing authority shall proceed to make best judgment assessment. The dealer shall be given a reasonable opportunity of being heard before completing the best judgment assessment.

> (4) Where the turnover of a dealer is determined and the tax or taxes payable for any return period is assessed under Section 22,23 and 24 a notice in Form No.12 shall be served upon the dealer and the dealer shall pay the sums demanded within the time and in the manner specified in the notice.
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> (5) Where the taxable turnover of a dealer is determined resorting to best judgment assessment, proportionate special rebate to the tax liability fixed on the turnover under sub section (2) of section 6 consequent to any addition made in the turnover may be given while fixing the tax liability in respect of such assessment."

4. It will be seen from a perusal of Rule 38 that the procedure to be followed by an assessing authority, who deems it necessary to verify the books of accounts of an assessee prior to proceeding with the process of best judgment assessment, is to fist serve a notice in Form No.17 calling upon the assessee to produce the books of accounts or other records as evidenced to prove his turnover and tax liability as also the correctness of the stock statement, goods or turnover reported or the input tax credit or refund claim. Thereafter, either after going through the records produced by the assessee in

response to the notice or in the event of the assessee not producing any records, the assessing authority is expected to take a decision as regards whether or not to proceed with the best judgment assessment in relation to the assessee. It is thereafter that, he is to issue the notice intimating the assessee of the proposal to complete the assessment on best judgment basis in terms of Section 25(1) of the KVAT Act. It follows on a perusal of the aforesaid provision that the notice in Form 17 calling for records and the notice contemplated under Section 25(1) cannot both be on the same date since the notice under Section 25(1) must necessarily follow the decision arrived at by the assessing authority to proceed further to complete the assessment on best judgment basis. Inasmuch as in the instant case, I find that both the Form 17 notice, as also the notice under Section 25(1), have been issued on the same date, and further, it is not in dispute that, the petitioner was not heard by the 1st respondent before passing Ext.P6 order, I quash Ext.P6 order and direct the 1st respondent to complete the assessment in relation to the petitioner for the assessment year 2013-2014 afresh after hearing the petitioner. To enable the 1st respondent to do so, I direct the petitioner to appear before the 1st respondent at his office at 11 am on 06.10.2015 with all documents necessary for the completion of the assessment. The 1st respondent shall thereafter pass orders in the matter on or before 31-10.2015.

The writ petition is disposed of as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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