IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 27938 of 2015 (N)

PETITIONER(S) :

SHAJY THOMAS,
PROPRIETOR, M/S.COLOUR FEST IMPRESSIONS,
KOOTHATTUKULAM, ERNAKULAM DISTRICT, PIN- 686 662.

BY ADVS.SRI.MOHAMMED RAFIQ
SRI.M.G.SHAJI

RESPONDENT(S) :
----

1. THE COMMERCIAL TAX OFFICER,
MUVATTUPUZHA, ERNAKULAM, PIN- 686 661.

2. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, MUVATTUPUZHA, ERNAKULAM, PIN- 686 661.

3. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN- 695 001.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 27938 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS :

P1: TRUE COPY OF THE NOTICE DATED 16.03.2015 RELATING TO THE ASSESSMENT PERIOD OF SEPTEMBER, 2014 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 22(3) OF THE KVAT ACT, 2003.

P2: TRUE COPY OF THE NOTICE DATED 16.03.2015 RELATING TO THE ASSESSMENT PERIOD OF OCTOBER, 2014 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 22(3) OF THE KVAT ACT, 2003.

P3: TRUE COPY OF THE NOTICE DATED 16.03.2015 RELATING TO THE ASSESSMENT PERIOD OF NOVERMBER, 2014 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 22(3) OF THE KVAT ACT, 2003.

P4: TRUE COPY OF THE NOTICE DATED 16.03.2015 RELATING TO THE ASSESSMENT PERIOD OF DECEMBER, 2014 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 22(3) OF THE KVAT ACT, 2003.

P5: TRUE COPY OF THE NOTICE DATED 16.03.2015 RELATING TO THE ASSESSMENT PERIOD OF JANUARY, 2015 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 22(3) OF THE KVAT ACT, 2003.

P6: TRUE COPY OF THE NOTICE DATED 26.03.2015 RELATING TO THE ASSESSMENT PERIOD OF FEBRUARY, 2015 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 22(3) OF THE KVAT ACT, 2003.

P7: THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32151439484/14-15 (9/14) DATED 09.04.2015 RELATING TO THE MONTH OF SEPTEMBER, 2014 PASSED BY THE 1ST RESPONDENT.

P8: THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32151439484/14-15 (10/14) DATED 09.04.2015 RELATING TO THE MONTH OF OCTOBER, 2014 PASSED BY THE 1ST RESPONDENT.

P9: THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32151439484/14-15 (11/14) DATED 09.04.2015 RELATING TO THE MONTH OF NOVEMBER, 2014 PASSED BY THE 1ST RESPONDENT.

P10: THE TRUE COPY FO THE ASSESSMENT ORDER NO. 32151439484/14-15 (12/14) DATED 09.04.2015 RELATING TO THE MONTH OF JANUARY, 2015 PASSED BY THE 1ST RESPONDENT.

P11: THE THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32151439484/14-15(1/15) DATED 09.04.2015 RELATING TO THE MONTH OF JANUARY, 2015 PASSED BY THE 1ST RESPONDENT.

P12: THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32151439484/14-15 (2/15) DATED 09.04.2015 RELATING TO THE MONTH OF FEBRUARY, 2015 PASSED BY THE 1ST RESPONDENT.

WP(C).No. 27938 of 2015 (N)

P13: TRUE COPY OF THE RETURN DATED 05.06.2015 FILED BY THE PETITIONER FOR THE PERIOD FROM 01.09.2014 TO 30.09.2014.

P14: TRUE COPY OF THE RETURN 05.06.2015 FILED BY THE PETITIONER FOR THE PERIOD FROM 01.10.2014 TO 31.10.2014.

P15: TRUE COPY OF THE RETURN 05.06.2015 FILED BY THE PETITIONER FOR THE PERIOD FROM 01.11.2014 TO 30.11.2014.

P16: TRUE COPY OF THE RETURN 05.06.2015 FILED BY THE PETITIONER FOR THE PERIOD FROM 01.12.2014 TO 31.01.2015.

P17: TRUE COPY OF THE RETURN 05.06.2015 FILED BY THE PETITIONER FOR THE PERIOD FROM 01.01.2015 TO 31.01.2015.

P18: TRUE COPY OF THE RETURN 05.06.2015 FILED BY THE PETITIONER FOR THE PERIOD FROM 01.02.2015 TO 28.02.2015.

P19: TRUE COPY OF THE DEMAND NOTICE NO.RRC 107/15-16 DATED 19.06.2015 ISSUED BY THE 2ND RESPONDENT UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT, 1968.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.27938 OF 2015 (N)

Dated this the 2nd day of November, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P7 to P12 assessment orders that were passed in relation to the petitioner for the months of September to December, 2014 and January and February, 2015 during the assessment year 2014-15. The grievance of the petitioner in the writ petition is essentially that before passing the said orders, the petitioner was not afforded an opportunity to produce the records as contemplated in Section 22 of the Kerala Value Added Tax Act [hereinafter referred to as the 'KVAT Act'], and further, the notice that was issued to him was a composite one requiring him to produce the records as also to show cause against the proposal for best judgment assessment, within a period of seven days. It is his contention that this would go against the express provisions of the KVAT Act, and in particular, the decision of this Court in **Shamon K.S. v. State of Kerala and Others [2015 (5) KHC 318]**.

2. I have heard the learned counsel for the petitioner as also

the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that, while passing Exts.P7 to P12 assessment orders, the 1st respondent Assessing Officer did not comply with the provisions of Sections 22 to 25 in the matter of service of notices to the petitioner as also affording the petitioner an opportunity of being heard. In the decision of this Court in **Shamon's case [cited supra]**, this Court has clearly indicated the procedure that has to be followed by an Assessing Officer before resorting to an assessment on best judgment basis. In paragraphs 4 and 5 of the said judgment, it is stated as follows:

> "**4**. Under the KVAT Act an assessee is expected to do a self-assessment of his tax liability for the return period. Unless on a scrutiny, the returns submitted by him, or the tax paid by him based on the said returns, is demonstrated to be incorrect or otherwise irregular, the self-assessment done by the assessee is treated as final. It is only when there is a discrepancy in the returns filed, or in the tax paid, that the revenue authorities are called upon to determine the tax liability of the assessee on best judgement basis. As the phrase itself would signify, an assessment on "best judgment basis" is to be resorted to only when all attempts, at finalising an assessment based on available material, fail. This is the scheme envisaged for completion of assessments under the KVAT Act and Rules, as is evident from a reading of Sections 21, 22, 24 and 25 of the KVAT Act read with

Rules 34, 35 and 38 of the KVAT Rules.

5. A reading of the aforementioned statutory provisions would indicate that where a return filed by a dealer is found to be defective or not accompanied by supporting documents or is found to be incorrect, the revenue authority can issue a notice to the dealer intimating him of the rejection of his returns, and providing him with an opportunity to file a fresh return, or for producing documents and accounts to prove the correctness of the return filed, within a period of 15 days from the date of notice. Thereafter, if no return is filed within the time granted, or the documents sought for are not produced, the revenue authority is expected to issue a fresh notice to the dealer intimating him of his decision to proceed with a best judgment assessment under S. 25 of the KVAT Act. This latter notice is essentially in the nature of a show cause notice, asking the dealer to show cause as to why the assessment should not be completed on best judgment basis. For the opportunity provided to the dealer to be reasonable and meaningful, the time granted to the dealer must be sufficient to enable him to appear before the authority concerned and show cause against the said proposal. No doubt, the time to be granted must necessarily be left to the discretion of the authority concerned. The discretion, however, is one that has to be exercised after taking into account the difficulties, if any, put forward by the dealer concerned and should not, in any event, be less than 7 days from the date of service of the notice on the dealer. It is disturbing to note that, notwithstanding the decision of this Court in **Suzion Infrastructure Service Ltd. v. Commerial Tax Officer (W.C), Ernakulam [2010 (3) KHC 299]** where the practice of revenue authorities, in issuing a composite notice calling for fresh returns/documents/accounts as well as for the hearing in connection with the best judgment assessment that is proposed, was deprecated, the revenue authorities continue to follow such an unfair and arbitrary procedure while completing assessments on best judgment basis."

4. Taking cue from the said judgment and noticing that in the facts of this case also the Assessing officer did not comply with the procedure that is required to be followed before completing an assessment on best judgment basis, I quash Exts.P7 to P12 assessment orders and direct the 1st respondent to complete the assessment, in relation to the petitioner, for the aforesaid period 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.a.m. on 16.11.2015. The 1st respondent shall pass orders within a period of one month thereafter.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/2/11/15