IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 28274 of 2015 (H)

PETITIONER(S):

M/S. JMASSH DOORS AND WINDOWS PRIVATE LIMITED AGED 41 YEARS
DOOR NO.14/526, EZHAKKAD, MUNDUR
PALAKKAD DISTRICT
REPRESENTED BY ITS MANAGING DIRECTOR
HYOTHI PRAKASAN P.R.

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

RESPONDENT(S):

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1. THE COMMERCIAL TAX OFFICER
2ND CIRCLE, PALAKKAD, PIN-678 001.

2. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT
GOVERNEMNT SECRETARIAT, THIRUVANANTHPAURAM-695 001.

R BY GOVERNMENT PLEADER, SMT. K.T. LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28274 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. COPY OF THE INVOICE NO.GH20120912 ISSUED BY THE YIWU RICHWAY IMPORT & EXPORT CO. LTD.CHINA, DATED 12/9/2012.

EXT.P1(A). COPY OF THE INVOICE NO.GF20121216 ISSUED BY THE YIWU RICHWAY IMPORT & EXPORT CO. LTD., CHINA DATED 16/12/2012.

EXT.P1(B). COPY OF THE INVOICE NO.HF20121228 ISSUED BY THE YIWU RICHWAY IMPORT & EXPORT CO. LTD., CHINA DATED 28/12/2012.

EXT.P1(C). COPY OF THE INVOICE NO.HF20121/1/40OB ISSUED BY THE YIWU RICHWAY IMPORT & EXPORT CO. LTD., CHINA DATED 21/1/2013.

EXT.P1(D). COPY OF THE INVOICE NO.HF20130112/1 ISSUED BY THE YIWU RICHWAY IMPORT & EXPORT CO. LTD., CHINA DATED 12/1/2013.

EXT.P1(E). COPY OF THE INVOICE NO.HF20130119/1/20A ISSUED BY THE YIWU RICHWAY IMPORT & EXPORT CO. LTD., CHINA DATED 19/1/2013.

EXT.P1(F). COPY OF THE INVOICE NO.HF20130203/1/S ISSUED BY THE YIWU RICHWAY IMPORT & EXPORT CO. LTD., CHINA DATED 3/2/2013.

EXT.P2. COPY OF THE DECLARTION ION FORM NO.8FA GENERATED BY THE PETITIONER DATED 12/10/2012.

EXT.P2(A). COPY OF THE DECLARTION ION FORM NO.8FA GENERATED BY THE PETITIONER DATED 25/1/2013.

EXT.P2(B). COPY OF THE DECLARTION ION FORM NO.8FA GENERATED BY THE PETITIONER DATED 25/1/2013.

EXT.P2(C). COPY OF THE DECLARTION ION FORM NO.8FA GENERATED BY THE PETITIONER DATED 25/1/2013.

EXT.P2(D). COPY OF THE DECLARTION ION FORM NO.8FA GENERATED BY THE PETITIONER DATED 25/1/2013.

EXT.P2(E). COPY OF THE DECLARTION ION FORM NO.8FA GENERATED BY THE PETITIONER DATED 18/2/2013.

EXT.P2(F). COPY OF THE DECLARTION ION FORM NO.8FA GENERATED BY THE PETITIONER DATED 18/2/2013.

EXT.P2(G). COPY OF THE DECLARTION ION FORM NO.8FA GENERATED BY THE PETITIONER DATED 18/2/2013.

EXT.P2(H). COPY OF THE DECLARTION ION FORM NO.8FA GENERATED BY THE PETITIONER DATED 28/2/2013.

EXT.P3. COPY OF THE RETURN FILED BY THE PETITIONER FOR THE YEAR 2012-13 DATED 21/8/2013.

EXT.P4.	**COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT DATED 16/7/2015.**
EXT.P5.	**COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 17/8/2015.**
EXT.P6.	**COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 17/8/2015.**
EXT.P7.	**COPY OF THE LOCAL DELIVERY BOOK EVIDENCING THE SUMBISSION OF EXTP.6 LETTER DATED 4/9/2015.**
EXT.P8.	**COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 31/8/2015.**
EXT.P9.	**COPY OF THE TRACK RECORD OF THE COVER USED TO DISPATCH EXT.P8 ORDER OF INDIAN POST DATED 7/9/2015.**

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

// True copy //

PA to Judge

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A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 28274 of 2015
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Dated this the 28th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P8 order of the 1st respondent, which completed the assessment of the petitioner under the Kerala Value Added Tax Act, hereinafter referred to as the "KVAT Act", for the assessment year 2012-2013. The grievance of the petitioner in the writ petition is essentially that, prior to passing Ext.P8 order, the petitioner was not afforded an opportunity of being heard and further the petitioner was not given an opportunity to produce the books of accounts and other records to fortify the contentions in the reply submitted to the pre-assessment notice.

2. I have heard Sri.Harisankar V. Menon, the learned counsel appearing for the petitioner as also Smt. Lilly K.T., the learned Government Pleader appearing 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 response to a notice that was issued to the petitioner on 10.07.2015, the petitioner had preferred Ext.P5 reply dated 17.08.2015, which was submitted before the office of the 1st

respondent on the same date. It is seen from the said reply that, while the petitioner made reference to entries made in the ledger and other books of accounts maintained by the petitioner, the books of accounts themselves were not made available for perusal by the adjudicating authority. There was nothing done in the matter by the petitioner even thereafter till 31.08.2015, on which date, Ext.P8 order was passed by the 1st respondent. The petitioner filed Ext.P6 reply, substantially on the same lines as Ext.P5 reply, but adding a sentence therein namely, that the petitioner be provided with an opportunity to produce books of accounts for 2012-2013 along with a personal hearing. The documents produced by the petitioner would show that Ext.P6 reply was submitted before the office of the 1st respondent only on 04.09.2015. By this time however, the 1st respondent had already passed Ext.P8 assessment order, as also issued the notice of demand. Considering the fact that the petitioner had almost two weeks time after the submission of Ext.P5 reply and before the 1st respondent passed Ext.P8 order, to produce the books of accounts, in order to substantiate his contentions in Ext.P5 reply, I am of the view that Ext.P8 order of the 1st respondent cannot be faulted on the ground that it was passed in violation of Rules of Natural Justice. The petitioner having chosen not to produce his books of accounts for perusal by the 1st respondent before the assessment, cannot be heard to complain of a violation of the Rules of Natural Justice while passing Ext.P8 order. The writ petition in its challenge against Ext.P8 order, therefore fails and is accordingly dismissed.

The learned counsel for the petitioner would submit that he would require some time to prefer an appeal against Ext.P8 order of the 1st respondent. Taking note of the said submission, I make it clear that if the petitioner prefers an appeal against Ext.P8 order, before the appellate authority, within two weeks from the date of receipt of a copy of this judgment, after complying with all the statutory formalities in connection with the same, the appellate authority shall consider the same as a duly constituted appeal in terms of the KVAT Act. To enable the petitioner to avail the alternate remedy as above, I also direct that recovery steps for recovery of amounts confirmed against the petitioner by Ext.P8 order, shall be kept in abeyance for the aforesaid period of two weeks.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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