IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 28801 of 2015 (A)

PETITIONER:

P.C. BABU, SON OF POLICHETTY,
AGED 53 YEARS, RESIDING AT 13/37,
KALOOR KADAVANTHARA ROAD, ERNAKULAM,
THE SOLE PROPRIETOR, SRI.SESHA SAYEE & COMPANY,
GENRAL MERCHANTS & COMMISSION AGENTS, 38/2201-A,
KALOOR-KADAVANTHRA ROAD, ELAMKULAM,
ERNAKULAM, COCHIN 17.

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENT(S):
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1. THE ASSISTANT COMMISSIONER, SPECIAL CIRCLE- III,
   DEPARTMENT OF COMMERCIAL TAXES,
   ERNAKULAM, PIN - 682 015.

2. THE DEPUTY COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   ERNAKULAM, PIN - 682 015.

3. THE SPECIAL TAHSILDAR (REVENUE RECOVERY),
   TALUK OFFICE, KANAYANNUR TALUK,
   ERNAKULAM, PIN - 682 011.

BY GOVERNMENT PLEADER SRI.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 28801 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1- TRUE COPY OF THE DEMAND NOTICE UNDER SEC.7 OF THE RR ACT SERVED BY THE 3RD RESPONDENT DATED 3.5.2014.

P2- TRUE COPY OF THE DEMAND NOTICE UNDER SEC.34 OF THE RR ACT, SERVED BY THE 3RD RESPONDENT, DATED 3.5.2014.

P3- TRUE COPY OF THE JUDGMENT IN WP(C) NO.23138 OF 2015 DATED 31.7.2015.

P4- TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE FAST TRACK TEAM HEADED BY THE 2ND RESPONDENT UNDER SEC.17D OF THE KGST ACT, DATED 14.10.2009.

P5- TRUE COPY OF THE ANNUAL RETURN FILED BY THE PETITONER BEFORE THE 1ST RESPONDENT, FOR THE YEAR 2004-2005, DATED 30.4.2005.

P6- TRUE COPY OF THE TRADING AND PROFIT & LOSS ACCOUNT AND BALANCE SHEET SUBMITTED BY THE PETITONER FOR THE YEAR 2004-2005.

P7- TRUE COPY OF THE LETTER COMMUNICATING THE STOPPAGE OF BUSINESS SUBMITTED TO THE 1ST RESPONDENT, DATED 30.4.2006.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 28801 of 2015

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Dated this the 16th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 order of assessment, that was completed against the petitioner under Section 17D of the Kerala General Sales Tax Act, hereinafter referred to as the "KGST Act", for the assessment year 2004-05. It is the case of the petitioner that Ext.P4 order, which is dated 14.10.2009, was received by the petitioner only recently, when recovery steps were initiated against the petitioner for realisation of amounts confirmed against the petitioner by Ext.P4 order. It is the specific case of the petitioner that the business premises of the petitioner was closed as early as in 2006 and he had intimated the assessing authority of the said fact by Ext.P7 communication dated 30.04.2006. Thereafter, he had no intimation with regard to any assessment that was conducted and it was only when he was served with recovery notice for recovery of amounts confirmed against him by Ext.P4 that he approached the authority and obtained a copy of Ext.P4 order. Counsel for the petitioner would submit that, inasmuch as Ext.P4 order was passed ex parte and without hearing the petitioner, the same ought to be set aside since the alternate remedy against Ext.P4 requires the petitioner to pay the entire amount confirmed against him by the assessment order as a condition for maintaining the appeal before the appellate authority.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, and finding that the petitioner appears to have intimated the assessing authority of the fact of closure of the business by the communication dated 30.04.2006 and further, that Ext.P4 order was passed without hearing the petitioner, I am of the view that the petitioner should be afforded an opportunity of being heard prior to an assessment order being passed against him. Under the said circumstances, I quash Ext.P4 order and direct the Fast Track Team, Commercial Taxes Department Ernakulam, to consider the case of the petitioner afresh, for assessment under the KGST Act, for the assessment year 2004-05. To enable the Fast Track Team to do so, I direct the petitioner to appear before a duly constituted Fast Track Team of the Commercial Taxes Department Ernakulam, at

11 AM on 02.12.2015. The Fast Track Team constituted pursuant to the directions in this judgment, shall pass a fresh assessment order as directed, within a period of one month thereafter.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /16.11.15