IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 28855 of 2015 (F)

PETITIONER:

M/S.NCL INDUSTRIES LTD.,
7TH FLOOR, RR TOWERS, CHIRAG ALI LANE,
ABIDS,
HYDERABAD-500 001
REPRESENTED BY ITS ASSISTANT MANAGER NITHIN KUMAR CHAUHAN.

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

RESPONDENTS:
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1. THE ASST. COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES, SPECIAL CIRCLE
   MATTANCHERRY AT ALUVA-683101.

2. DEPUTY COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES, SALES TAX COMPLEX,
   MATTANCHERY, KOCHI-2, PIN:682002.

3. INSPECTING ASSISTANT COMMISSIONER
   DEPARTMENT OF COMMERCIAL TAXES, SALES TAX COMPLEX
   MATTANCHERRY, KOCHI-2, PIN:682002.

4. THE BRANCH MANAGER
   STATE BANK OF HYDERABAD, INDUSTRIAL FINANCE BRANCH
   TOPAZ BUILDING, AMRUTHA HILLS, PUNJAGUTTA
   HYDERABAD, A.P.500 082.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28855 of 2015 (F)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ASSESSMENT ORDER NO.32150789087/2012-13 DATED 30.8.2014 FOR THE YEAR 2012-13 ISSUED BY THE IST RESPONDENT TO THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE PROHIBITORY ORDER NO.F(RR)192/14-15 DATED 21.8.2015 ISSUED BY THE 3RD RESPONDENT TO 4TH RESPONDENT BANK.

EXHIBIT P3: TRUE COPY OF THE AUDIT REPORT IN FORM 13 AND 13A DATED 17.09.2015 TRADING, PROFIT AND LOSS ACCOUNT DATED 16.9.2015 BEFORE THE IST RESPONDENT BY THE PETITIONER.

EXHIBIT P4: TRUE COPY OF THE JUDGMENT OF THE DIVISION BENCH OF HON'BLE HIGH COURT OF KERALA IN O.T.REV. NO.49/2014 DATED 25.9.2014.

EXHIBIT P5: 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.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.28855 of 2015

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Dated this the 29th day of October 2015

JUDGMENT

The challenge in the writ petition is against Ext.P1 order passed in relation to the petitioner under the KVAT Act for the assessment year 2012-2013. The grievance of the petitioner in the writ petition is essentially that Ext.P1 order was passed by the 1st respondent without affording a personal hearing to the petitioner and also on an erroneous legal premise in that the best judgment assessment was resorted to solely for the reason that the petitioner had not filed the Form 13 and Form 13A statements or audited Profit and Loss Accounts before the assessing authority. The petitioner would rely on Ext.P4 judgment of this Court, wherein, it was clearly held that the mere fact that audited statement in Form 13 and 13A were not filed could not have been a reason for the revenue to complete an assessment under Section 25(1) of the KVAT Act.

Taking note of the said judgment of this Court, I am of the view that Ext.P1 order of assessment passed in relation to the petitioner cannot be legally sustained. Accordingly, I quash Ext.P1 assessment order and allow this writ petition.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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