IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 28904 of 2015 (K)

PETITIONER :

M/S. HAILSTONE INNOVATIONS PVT.LTD.,
AYYANKUNNU INDUSTRIAT ESTATE, MUNDUR P.O.,
THRISSUR DISTRICT
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR
R.J. WILLIAMS, AGED 40 YEARS

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

RESPONDENT :

ASST. COMMISSIONER - III,
COMMERCIAL TAXES SPECIAL CIRCLE,
THRISSUR - 680 011

BY GOVERNMENT PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 28904 of 2015 (K)

<u>APPENDIX</u>

PETITIONER(S)' EXHIBITS

EXT.P1: **A TRUE COPY OF NOTICE ISSUED BY THE RESPONDENT 13/8/15.**

EXT.P2: **A TRUE COPY OF ASSESSMENT ORDER FOR THE YEAR 11-12 ISSUED BY THE 2ND RESPONDENT 31/8/15**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.28904 of 2015

....

Dated this the 4th day of November, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P2 order of assessment passed in relation to the petitioner under the Central Sales Tax Act for the assessment year 2011-2012. The grievance of the petitioner in the writ petition is essentially that, although Ext.P1 pre-assessment notice was issued by the respondent under Section 25 of the Value Added Tax Act, the notice dated 13.08.2015 was served on the petitioner only on 26.08.2015 by about 4 pm and it directed the petitioner to file objections before 31.08.2015. It is the case of the petitioner that he was not able to collect the necessary details for filing the objections within the brief period granted to him, and therefore, he could not file the objections within time. The respondent therefore proceeded to pass Ext.P2 order without considering the objections of the petitioner and without hearing him on 31.08.2015, the date shown in the pre-assessment notice. Counsel for the petitioner would submit that Ext.P2 is vitiated through a non-compliance with the rules of natural justice, and therefore, the said order ought to be quashed.

2. I have heard the learned counsel appearing on behalf of the petitioner as also 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 the pre-assessment notice was served on the petitioner only on 26.8.2015 and the petitioner was given less than 5 days time to file a reply and to attend the hearing before the respondent. This Court has in the decision in **Shamon K.S. v. State of Kerala and Others [2015 (5) KHC 318]** clearly spelt out the requirements of issuing notices under Section 22 and 25 of the VAT Act and also indicated the time that has to be granted to an assessee before proceeding with the best judgment assessment. It is indicated in the said judgment that once a decision is arrived at by the assessing authority to resort to a best judgment assessment, the assessee should be given not less than 7 days notice of the proposal of the Assessing Officer to resort to best judgment assessment. Inasmuch as the petitioner has not been afforded such an opportunity by the respondent, I quash Ext.P2 order and direct the respondent to pass fresh orders of assessment for the assessment year 2011-2012 after hearing the petitioner. To enable the respondent to do so, I direct

the petitioner to appear before the respondent at his office at 11 am on 12.11.2015. The respondent shall pass orders as directed within one month thereafter.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/04.10.15