

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 29739 of 2015 (N)

PETITIONER(S) :

**M/S.T.M.STEELS AND CEMENTS,
AG ROAD, KOZHIKODE,
REPRESENTED BY ITS MANAGING PARTNER T.M.SALEEM.**

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

RESPONDENT(S) :

**1. ASSISTANT COMMISSIONER,
SPECIAL CIRCLE, DEPARTMENT OF COMMERCIAL TAXES,
KOZHIKODE - 673 001.**

**2. THE COMMERCIAL TAX OFFICER,
1ST CIRCLE, KOZHIKODE - 673 001.**

BY GOVERNMENT PLEADER SMT.LILLY.K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: COPY OF PRE-ASSESSMENT NOTICE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 15.06.2015.**
- P2: COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT WITH THE DETAILS OF EACH AND EVERY UNACCOUNTED SALES DATED 06.07.2015.**
- P3: COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 17.08.2015.**
- P4: COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE M/S. FAMOUS HARDWARE AND COPY MARKED TO 1ST AND 2ND RESPONDENT ALSO DATED 29.08.2015.**
- P5: COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 07.09.2015.**
- P6: COPY OF LETTER FILED BY M/S.FAMOUS HARWARES TO THE 2ND RESPONDENT DATED 19.09.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.29739 OF 2015 (N)

Dated this the 14th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 assessment order passed by the 1st respondent in relation to the petitioner for the assessment year 2010-11. The grievance of the petitioner in the writ petition is essentially that although he had made available certain information with regard to the turnover, before the 1st respondent, by way of Exts.P3 and P4 letters, which were addressed both to the 1st respondent as also the 2nd respondent, the latter being the Assessing authority for M/s.Famous Hardwares, to whom the petitioner was alleged to have made supplies, the turnover relating to it was also assessed in the petitioner's hands. It is the contention of the petitioner that Ext.P5 order was passed without considering Exts.P3 and P4 letters, copies of which were marked to the 1st respondent.

2. When the matter came up for admission, I had directed the learned Government Pleader to get instructions as to whether Exts.P3 and P4 communications were received by the 1st respondent before

passing Ext.P5 order. When the matter was taken up today for orders, the learned Government Pleader submitted, on instructions, that Exts.P3 and P4 documents were not received in the office of the 1st respondent before passing Ext.P5 order. Taking note of the said submission, I find that the challenge in the writ petition against Ext.P5 order on the ground that the 1st respondent had not considered Exts.P3 and P4 documents, before passing Ext.P5 order, cannot be sustained. I also find that, against Ext.P5 order, in the absence of any material to suggest that the same was passed without complying with the rules of natural justice, the petitioner has an effective alternate remedy by way of preferring an appeal before the Appellate Authority under the KVAT Act. Thus, I dismiss the writ petition, in its challenge against Ext.P5 order, and relegate the petitioner to the remedy of filing an appeal before the Appellate authority under the KVAT Act, against Ext.P5 order of the 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/14/10/15