**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936**

**WP(C).No. 30403 of 2014 (A)**
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**PETITIONER(S) :**
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**M/S.PAISONS,**
**T.D ROAD, ERNAKULAM, pin - 682 035.**
**REPRESENTED BY ITS MANAGING APRTNER,**
**GOPALAKRISHNAN D**

**BY ADV. SRI.MOHAMMED RAFIQ**

**RESPONDENT(S) :**
**------------------------**

1. **THE COMMERCIAL TAX OFFICER,**
   **2ND CIRCLE, DEPARTMENT OF COMMERCIAL TAXES,**
   **ERNAKULAM 682 018.**

2. **THE STATE OF KERALA,**
   **REPRESENTED BY THE SECRETARY**
   **DEPARTMENT OF COMMERCIAL TAXES, TRIVANDRUM 695001.**

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

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**AMV**

**WP(C).No. 30403 of 2014 (A)**

## APPENDIX

**PETITIONER(S)' EXHIBITS**

| | |
|---|---|
| EXHIBIT P1 | COPY OF THE ANNUAL RETURN FOR THE YEAR 2012-13 DATED 25-08-2014 E FILED BY THE PETITIONER. |
| EXHIBIT P2 | COPY OFTHE NOTICE NO. 32070200815 DATED 23-09-2014 UNDER SECTION 25(1) OF THE KERAALA VALUE ADDED TAX ACT, 2003, ISSUED BY THE IST RESPONDENT. |
| EXHIBIT P3 | COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE IST RESPONDENT ON 30-09-2014. |
| EXHIBIT P4 | COPY OF THE ASSESSMENT ORDER NO.32070200815 DATED 07-10-2014 FOR THE YEAR 2012-13 PASSED BY THE IST RESPONDENT UNDER SECTION 25(1) OF THE KERALAVALUE ADDED TAX ACT, 2003. |
| EXHIBIT P5 | COPY OF THE JUDGMENT DATED 25-09-2014 OF THE HON'BLE HIGH COURT OF KERALA, IN O.T REV.49 OF 2014. |

**RESPONDENT(S)' EXHIBITS : NIL**

/TRUE COPY/

P.A.TO JUDGE

AMV

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C) No.30403 of 2014 (A)**

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Dated this the 21st day of January, 2015

## JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, 2003, is aggrieved by Ext.P4 assessment order, passed for the assessment year 2012 - 2013, in terms of Section 25 of KVAT Act.

2. In the writ petition, the grievance of the petitioner is that, Ext.P4 order was passed on best judgment basis solely on the ground that, the petitioner had not filed the audit report in Form-13 and audited statement in Form-13A as provided under Section 42 of the KVAT Act. It is the specific case of the petitioner that the technical omissions noted by the respondents cannot by themselves form the basis of a best judgment assessment that is done without reference to any other material, such as books of accounts and the trading accounts of the petitioner.

3. I have heard Sri.Mohammed Rafiq, learned counsel appearing for the petitioner as also Smt.Littly K.T., learned Government Pleader appearing for the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that the issue as to whether the assessment under Section 25 can be completed on best judgment basis solely on the ground that, audited statement in Form-13 and 13A are not filed, has already been decided in favour of the assessee, through Ext.P5 judgment of the Division Bench of this Court. In that view of the matter, Ext.P4 order of the first respondent, to the extent it does not rely on any other material, other than the fact of non production by the petitioner of Form-13 and 13A, while completing the re-assessment against him, cannot be legally sustained. Accordingly, I quash Ext.P4 order of the first respondent and direct him to pass fresh orders, pursuant to Ext.P2 notice issued to the petitioner, after perusing the books of accounts and other documents relied upon by the petitioner to substantiate his contentions regarding the correctness of the accounts maintained by him. The first respondent shall pass fresh orders in the matter within a period of three months from the date of receipt of a copy of this judgment. The first respondent shall afford an opportunity of hearing to the petitioner and also advert to the various materials

that are relied upon by the petitioner to substantiate his contentions on merits. To enable the first respondent to do this, I direct the petitioner to appear before the first respondent at 11 a.m. on 18.02.2015 for a hearing in connection with the fresh adjudication that is directed in this judgment.

Sd/-
**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

AMV/22/01/