IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 30200 of 2015 (Y)

PETITIONER:

HOTEL AYSWARYA,
T.C.28/17064(1), PAZHAVANGADI, FORT,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
PROPRIETOR, VIJAYAKUMARAN NAIR S.

BY ADVS. SRI.S.ANIL KUMAR (TRIVANDRUM),
SRI.K.S.HARIHARAN NAIR.

RESPONDENTS:

COMMERCIAL TAX OFFICER,
THIRD CIRCLE, TAX TOWERS, KARAMANA,
THIRUVANANTHAPURAM-695 002.

BY GOVT. PLEADER SMT.LILLY. K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

WP(C).No. 30200 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS:-

P1:-	COPY OF ANNUAL RETURN FOR 2011-2012.
P1(A):-	COPY OF ANNUAL RETURN FOR 2012-13.
P2:-	COPY OF THE NOTICE DATED 30/05/2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2011-2012.
P2(A):-	COPY OF NOTICE DTD. 30/05/2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2012-2013.
P3:-	COPY OF REPLY FILED BY THE PETITIONER FOR THE YEAR 2011-2012.
P3(A):-	COPY OF REPLY FILED BY THE PETITIONER FOR THE YEAR 2012-2013.
P4:-	COPY OF NOTICE DTD. 11/06/2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2012-13.
P4(A):-	COPY OF THE NOTICE DATED 11/06/2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2012-13.
P5:-	COPY OF REPLY DTD. 15/06/2015 FILED BY THE PETITIONER
P6:-	COPY OF ORDER DTD. 04/08/2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2011-2012.
P6(A):-	COPY OF ORDER DTD. 04/08/2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2012-2013.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 30200 of 2015
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Dated this the 19th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Exts. P6 and P6 (a) orders, that were passed by the respondent cancelling the permission granted to the petitioner for paying tax on compounding basis for the assessment years 2011-12 and 2012-13 respectively. The contention of the petitioner in the writ petition is that, while passing Exts.P6 and P6(a) orders, the respondents had relied on material, that was not put to the petitioner in the sense that, while it was the contention of the respondent in the notices issued to the petitioner that, there were several purchases effected from unregistered dealers, in respect of which, purchase tax had not been paid by the petitioner, the details of those transactions, which allegedly attracted tax were not made available to the petitioner. It is the case of the petitioner that, the purchases made from unregistered dealers, were all in respect of non taxable goods, falling under the 1st schedule of the Kerala Value Added Tax Act, and therefore, there was no question of payment of any purchase tax in respect of the said goods.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for

the respondent.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find force in the contention of the petitioner that, he was not afforded an opportunity of commenting upon those transactions, where the petitioner had allegedly avoided payment of purchase tax. In my view, when the respondent had a specific case that the petitioner had not paid purchase tax in respect of certain transactions, it was incumbent upon the respondent to put the petitioner on notice of those particular transactions, so that the petitioner could give his clarifications in respect of those transactions. Inasmuch as, the said procedure was not followed by the respondent, while passing Exts.P6 and P6(a) orders, the said orders are vitiated by a non compliance with the rules of natural justice. Accordingly, I quash Exts.P6 and P6(a) orders and direct the respondent to pass fresh orders in relation to the permission granted to the petitioner for payment of tax on compounding basis, after hearing the petitioner. I direct the respondent to furnish the petitioner with the details regard the transactions, where the petitioner had purchased material from unregistered dealers in transactions that allegedly

attracted tax under the KVAT Act. The respondent shall furnish the said details to the petitioner within a period of two weeks from today. On receipt of the same, the petitioner shall file objections, if any, to the proposals of the respondent, within a further period of two weeks from the date of receipt of the information from the respondent. The respondent shall, then proceed to pass fresh orders as directed in this judgment, within a period of three weeks, thereafter, after hearing the petitioner.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /19.10.15