IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

WP(C).No. 30240 of 2015 (D)

PETITIONER :

M/S.HI-TEC SOLUTIONS
CHERUPARAMBATH 1ST CROSS ROAD,
KADAVANTHARA, COCHIN-20
REPRESENTED BY ITS PARTNER MINI G. NAIR.

BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANI

RESPONDENT(S) :
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1. ASSISTANT COMMISSIONER (WC)
COMMERCIAL TRAXES, CLASS TOWER, ORS ROAD
ERNAKULAM-18.

2. COMMISSIONER OF COMMERCIAL TAXES
TAX TOWER, KARAMANA P.O., THIRUVANANTHAPURAM.

3. SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVT. SECRETARIATE
THIRUVANANTHAPURAM.

R1 TO R3 BY GOVT. PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 30240 of 2015 (D)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1: **TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE IST RESPONDENT TO THE PETITIONER.**

EXHIBIT P2: **TRUE COPY OF THE NOTICE NO.32072085808/2009-10 DATED 24.6.2015 ISSUED BY THE IST RESPONDENT TO THE PETITIONER.**

EXHIBIT P3: **TRUE COPY OF THE LIST OF FORM 20 H FILED BY THE PETITIONER ALONG WITH THE RETURNS.**

EXHIBIT P4: **TRUE COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE IST RESPONDENT DATED 3.9.2015.**

EXHIBIT P5: **TRUE COPY OF THE REOPENED ASSESSMENT ORDER PASSED BY THE IST RESPONDENT DATED 31.8.2015.**

EXHIBIT P6: **TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN *B T MAMMOO V. ASSISTANT COMMISSIONER (ASSESSMENT), [1997] 107 STC 426.***

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.30240 of 2015

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Dated this the 26th day of November, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 order of assessment passed in relation to the partnership firm of which the petitioner is a partner, under the Kerala Value Added Tax Act for the assessment year 2009-2010. The grievance of the petitioner in the writ petition is essentially that, before passing Ext.P5 order, she was not afforded an opportunity of hearing. In the writ petition, it is stated that as the pre-assessment notice was sent to the address of the firm which was closed, the petitioner did not receive the said notice. It would appear that, later, the notice was sent by the respondents, once again, to the permanent address of the petitioner and all the other partners of the firm. The petitioner, however, was no longer residing in the said address. The petitioner, however, visited her parents at the said address during the Onam vacation and it was then that the petitioner came to know of the service of the pre-assessment notice on the firm. Although the petitioner immediately took steps to prefer Ext.P4 reply to the pre-assessment notice. Ext.P5 order was passed before the said reply reached the respondent assessing authority.

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 from Ext.P5 order that although there is a mention therein of a notice having been served at the address of the firm and the notice having been returned with the endorsement “left”, it is a fact that none of the partners of the petitioner firm were heard prior to the passing of Ext.P5 order. It is also seen from the averments in the writ petition, and the documents produced therein, that the petitioner had actually preferred Ext.P4 reply which, however, reached the assessing authority three or four days after the passing of Ext.P5 order. Inasmuch as I find that there will be no prejudice caused to the respondents if the assessment is completed after hearing the petitioner also, I quash Ext.P5 order and direct the 1st respondent to complete the assessment in relation to the petitioner firm for the assessment year 2009-2010 under the Kerala Value Added Tax Act afresh, after hearing the petitioner. To enable the 1st respondent to do so, I direct the petitioner to appear before the 1st respondent at his office at 11 am on 04.12.2015. The 1st respondent shall pass orders as directed within a month thereafter.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/26.11.15