IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 30754 of 2015 (T)

PETITIONER(S):

M/S.P.B.C. INTERNATIONAL, 1438/C,
N.H. BY-PASS JUNCTION, VENGERI P.O.,
VENGERI, CALICUT-673 010, REPRESENTED BY ITS
MANAGING PARTNER MR.SHARIL KUMAR. M.

BY ADVS.SMT.K.LATHA,
SRI.C.RAMACHANDRAN,
SMT.M.K.HAJARA.

RESPONDENT(S):
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1. THE STATE OF KERALA,
   REPRESENTED BY CHIEF SECRETARY,
   SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. THE COMMERCIAL TAX OFFICER,
   IIND CIRCLE, CALICUT-673 305.

3. THE SALES TAX OFFICER (RECOVERY),
   O/O. THE DEPUTY COMMISSIONER,
   COMMERCIAL TAXES DEPARTMENT, PIN-673 006.

BY GOVT. PLEADER SRI.LIJU V.STEPHEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 30754 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 COPY OF THE INTIMATION LETTER DATED 14/05/2012 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P2 COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN WP(C).NO.23822/2015 DATED 9TH DAY OF SEPTEMBER 2015.

EXT.P3 COPY OF THE ADJOURNMENT LETTER DATED 10/09/2015 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P4 COPY OF THE ASSESSMENT ORDER NO.3211079809/2013-14 DATED 14/09/2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT.P5 COPY OF THE DEMAND NOTICE IN FORM NO.12 DATED 14/09/2015 BASED ON THE P4 ASSESSMENT ORDER FOR THE YEAR 2013-2014 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.30754 of 2015

Dated this the 9th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P4 order of assessment passed by the 2nd respondent, completing the assessment of the petitioner for the assessment year 2013-2014 on best judgment basis. The grievance of the petitioner in the writ petition is essentially that, before passing Ext.P4 order, the 2nd respondent did not consider the reply filed by the petitioner, to the notice issued to the petitioner, and also did not grant an opportunity of personal hearing to the petitioner.

2. I have heard the learned counsel for the petitioner and also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I note from Ext.P4 order that, the petitioner was afforded two opportunities for filing replies and appearing for a personal hearing before the 2nd respondent. On the first occasion, when the matter was posted on 31.08.2015 for a personal hearing, the authorised representative of the petitioner had attended the office of the 2nd respondent and

submitted a request for obtaining a copy of the penalty order on the basis of which the assessment was proposed to be completed. Thereafter, another opportunity was provided to the petitioner on 10.09.2015 on which date, however, the petitioner did not appear for the personal hearing. It is also not in dispute that, there was no written objection submitted before the 2nd respondent before the date stipulated. It was under the said circumstances that Ext.P4 order came to be passed by the 2nd respondent. On a consideration of the aforesaid facts, I am of the view that, the challenge in the writ petition against Ext.P4 order on the ground of alleged violation of natural justice cannot be legally sustained, I therefore dismiss the writ petition in its challenge against Exts.P4 and P5 and relegate the petitioner to the alternate remedy of filing an appeal against Ext.P4 order before the appellate authority under the Kerala Value Added Tax Act. Counsel for the petitioner submits that, the petitioner will file an appeal against Ext.P4 order within two weeks from today. Taking note of the said submission, I direct that recovery proceedings for recovery of amounts confirmed against the petitioner by Ext.P4 order shall be kept in abeyance for a period of two weeks from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns