IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 32700 of 2015 (J)

PETITIONER(S) :

A.RAJU,
PROPRIETOR, APSARA JEWELLERS,
CHARUMOOD, MAVELIKKARA- 690 505,
ALAPPUZHA DISTRICT.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS

RESPONDENT(S) :
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1. THE COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, MAVELIKKARA- 690 101.

2. THE COMPTROLLER AND AUDITOR GENERAL OF INDIA,
   ACCOUNTANT GENERAL OFFICE, THIRUVANANTHAPURAM- 695 001.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWER, KARAMANA, THIRUVANANTHAPURAM- 695 002.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 32700 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF ANNUAL RETURN E-FILED ON 01.02.2014 IN KVATIS FOR THE YEAR 2012-13 BY THE PETITIONER BEFORE 1ST RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE PRE-ASSESSMENT NOTICE DATED 09.12.2014 ISSUED U/S 25(1) READ WITH SECTION 25A OF THE KVAT ACT ISSUED BY 1ST RESPONDENT TO PETITIONER.

EXHIBIT P3: TRUE COPY OF THE REPLY DATED 22.12.2014 SUBMITTED BEFORE 1ST RESPONDENT BY THE PETITIONER.

EXHIBIT P4: TRUE COPY OF 2ND NOTICE DATED 09.02.2015 ISSUED TO PETITIONER BY 1ST RESPONDENT.

EXHIBIT P5: TRUE COPY OF ADJOURNMENT REQUEST LETTER DATED 18.02.2015 SUBMITTED BEFORE 1ST RESPONDENT BY PETITIONER.

EXHIBIT P6: TRUE COPY OF THE ASSESSMENT ORDER DATED 25.09.2015 PASSED U/S 25(1) READ WITH SECTION 25A OF THE KVAT ACT BY 1ST RESPONDENT TO PETITIONER.

EXHIBIT P7: TRUE COPY OF THE TRADING PROFIT & LOSS ACCOUNT INCLUDING STOCK VALUATION FOR THE YEAR 2011-12 DULY VERIFIED BY THE CHARTERED ACCOUNTANT.

EXHIBIT P8: TRUE COPY OF THE TRADING PROFIT & LOSS ACCOUNT INCLUDING STOCK VALUATION FOR THE YEAR 2012-13 DULY VERIFIED BY THE CHARTED ACCOUNTANT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.32700 of 2015

Dated this the 28th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P6 assessment order passed in relation to the petitioner under the Kerala Value Added Tax Act, for the assessment year 2012-2013. The grievance of the petitioner is essentially that before passing Ext.P6 order, the petitioner was not affording an effective opportunity of countering the material that was used against him in the assessment order. It is therefore the contention of the petitioner that Ext.P6 order is vitiated by non-compliance with the rules of natural justice.

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

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in Ext.P6 order, the 1st respondent assessing authority clearly records that there were two opportunities of hearing granted to the petitioner. On the first occasion, the petitioner had appeared before the assessing authority and produced certain documents. Thereafter he sought some time for production of further documents which opportunity was also granted by the assessing authority. Although the petitioner was granted the adjournment that was sought for, for the production of documents and for another hearing, it is on record that the petitioner did not produce any documents within the time granted to him and also did not turn up for hearing within the said time. It was under those circumstances that the 1st respondent assessing authority proceeded to pass Ext.P6 order on the basis of the material that was available before him. On a consideration of Ext.P6 order, I do not see any reason to interfere with the said order in these proceedings under Article 226 of the Constitution of India. This is more so, because, I am convinced that there has been no violation of the rules of natural justice while passing Ext.P6 order against the petitioner. The remedy of the petitioner against Ext.P6 order lies in filing an appeal before the appellate authority under the Kerala Value Added Tax Act to which remedy, I now relegate the petitioner. To enable the petitioner to take recourse to the appellate remedy under the Kerala Value Added Tax Act against Ext.P6 order, I direct that coercive steps for recovery of amounts confirmed against the petitioner by Ext.P6 order shall be kept in abeyance for a period of one month from the date of receipt of a copy of this judgment. The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/28.10.15