IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 32830 of 2015 (C)

PETITIONER(S):

M/S. ASIA POWERCOM PVT.LTD.,
C.C.NO.38/1993, A-7, GANDHI NAGAR, COCHIN- 682 020,
REPRESENTED BY ITS HEAD ACCOUNTS & FINANCE,
SRI.RAJENDRA PARAB.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S) :

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1. COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, 2ND CIRCLE, THRIPUNITHURA- 682 301.

2. ASSISTANT COMMISSIONER,
   SPECIAL CIRCLE-II, COMMERCIAL TAXES,
   THEVARA, ERNAKULAM- 682 015.

3. COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWER, KARAMANA P.O., THIRUVANANTHAPURAM- 695 022.

4. STATE OF KERALA REPRESENTED BY SECRETARY
   TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM- 695 001.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 32830 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF REGISTRATION CERTIFICATE DATED 07.06.2007 UNDER THE KVAT AND CST ACTS ISSUED BY 1ST RESPONDENT AND WHICH WAS ENDORSED WITH ADDRESS CHANGE BY 2ND RESPONDENT ALSO UNDER RELEVANT PERIOD.

EXHIBIT P2: TRUE COPY OF ANNUAL E-RETURN FOR THE YEAR 2012-13 DATED 29.06.2013 SUBMITTED BY PETITIONER BEFORE 1ST RESPONDENT.

EXHIBIT P3: TRUE COPY OF LETTER DATED 03.04.2013 FOR THE INTIMATION FOR SHIFTING BUSINESS PLACE TO 'GANDHI NAGAR' COCHIN- 682 020, WHICH WAS ACKNOWLEDGED BY 2ND RESPONDENT.

EXHIBIT P3(A): TRUE COPY OF RENTAL AGREEMENT DATED 01.04.2013, ACCOMPANIED WITH EXT.P3 LETTER, SUBMITTED BEFORE 2ND RESPONDENT.

EXHIBIT P4: TRUE COPY OF AUDIT REPORT IN FORM NO.13 & 13 A FOR THE YEAR 2012-13 DATED 27.12.2013, ALONG WITH PROFIT AND LOSS ACCOUNT.

EXHIBIT P5: TRUE COPY OF CIRCULAR NO.28/2012 DATED 29.10.2012 ISSUED BY 3RD RESPONDENT FOR COLLECTION OF DETAILS OF ASSESSEE FOR SENDING PROPER NOTICE AND COMMUNICATIONS, AS PER THE DIRECTIONS OF THIS HON'BLE COURT.

EXHIBIT P6: TRUE COPY OF ASSESSMENT ORDER DATED 29.06.2015 U/S.25(1) OF THE KVAT ACT FOR THE YEAR 2012-13, ISSUED BY 1ST RESPONDENT THROUGH AUTHORIZED REPRESENTATIVE WHEN HE VISITED OFFICE OF 1ST RESPONDENT ON 28.09.2015.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 32830 of 2015

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Dated this the 29th day of October, 2015

JUDGMENT

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, hereinafter referred to as the "KVAT ACT", for the assessment year 2012-13. The grievance of the petitioner against Ext.P6 is essentially that the said order was passed by the 1st respondent without serving a pre-assessment notice to the petitioner and without affording the petitioner an opportunity of being heard. It is therefore, the contention of the petitioner that Ext.P6 order is vitiated by a non-compliance with the rules of natural justice.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing 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.P6 order that a pre-assessment notice was sent to the erstwhile address of the petitioner and the said notice was returned with the endorsement "left". Thereafter, the respondents sent another

notice to the same address, which was also returned with the endorsement “left”. It is under these circumstances, that the 1st respondent appears to have proceeded with the assessment, that resulted in Ext.P6 order. I find force however, in the submission of counsel for the petitioner that, on the notice that was sent to the petitioner initially having been returned, the respondents ought to have taken steps to affix the notice at the premises, instead of merely sending the notice to the same address, over and over again. At any rate, the fact remains that the petitioner was not served with a notice, or not given an opportunity of hearing before passing Ext.P6 order. I, therefore, quash Ext.P6 order and direct the 1st respondent to pass fresh orders of assessment in relation to the petitioner for the assessment year 2012-13, after hearing the petitioner, within a period of one month from the date of receipt of a copy of this judgment. 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 12.11.2015.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /29.10.15