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. 32845 of 2015 (E)

PETITIONER(S):

M/S. GASHA STEELS PVT. LTD., VIII/812--A,
N.I.D.A., KANJIKODE, PALAKKAD,
REPRESENTED BY ITS DIRECTOR P.TAYSHA.

BY ADVS.SRI.K.SRIKUMAR (SR.)
SRI.K.MANOJ CHANDRAN
SRI.P.R.AJITHKUMAR

RESPONDENT(S):
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1. THE ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE, COMMERCIAL TAXES, PALAKKAD-678001.

2. THE DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, PALAKKAD-678001.

3. THE INSPECTING ASSISTANT
COMMISSIONER OF COMMERCIAL TAXES, PALAKKAD-678001.

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:

PJ

WP(C).No. 32845 of 2015 (E)
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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 **TRUE COPY OF THE NOTICE DATED 2/7/15**

EXHIBIT P2: **TRUE COPY OF THE REPLY DATED 24/7/15**

EXHIBIT P3: **TRUE COPY OF THE ASSESSMENT ORDER DATED 3/9/15**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 32845 of 2015
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Dated this the 29th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 order of assessment passed in relation to the petitioner under the Kerala Value Added Tax Act, hereinafter referred to as the "KVAT ACT", for the assessment year 2012-2013. The grievance of the petitioner in the writ petition is essentially that the objection to the petitioner against the proposal that was served on him, was not considered by the respondents and further, the petitioner was not afforded an opportunity of hearing, despite having specifically requested for the same. It is therefore, contended that Ext.P3 order is vitiated by a non-compliance with the rules of natural justice.

2. I have heard the learned senior 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 submission made across the bar, I find that in the notice that was served on the petitioner prior to the assessment, the petitioner was asked to file objections, if any, within fifteen days of receipt of the notice and he was also afforded an

opportunity of hearing on 15.07.2015. The notice, however, was served on the petitioner only on 09.07.2015 and therefore, the period of fifteen days that was granted would have expired only on 24.07.2015. Ext.P3 order, however, was passed on 30.09.2015, on noticing that the petitioner had not appeared for a hearing on 15.07.2015. Although the learned counsel appearing for the petitioner would submit that the petitioner had actually appeared on 15.07.2015 and sought for an adjournment, by stating that he wanted to file a fresh set of objections this request was not considered by the 1st respondent, who proceeded to pass Ext.P3 order, without hearing the petitioner. The action of the 1st respondent cannot be legally countenanced. This Court has on many occasions reiterated that the notice issued to a dealer prior to assessment cannot be a composite notice clubbing the requirements under Sections 22 and 25 of the KVAT Act. This aspect was reiterated recently by this Court in the judgment dated 09.10.2015 in WP(C) No.30189 of 2015 (Shamon K.S. v. State of Kerala). Accordingly, I quash Ext.P3 order of the 1st respondent 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 05.11.2015.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /29.10.15