IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 33735 of 2015 (N)

PETITIONER :

METROTEX
KASMISONS ESTATE, ABOVE AXIS BANK
VYTTILA JANATHA JN., S.A. ROAD
ERNAKULAM, KOCHI – 682 019
(REPRESENTED BY THE MANAGING PARTNER
SRI. IJAZ K. M.)

BY ADVS.SRI.K.N.SREEKUMARAN
SMT.V.P.SEENA DEVI

RESPONDENT(S) :
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1. **ASSISTANT COMMISSIONER**
   COMMERCIAL TAXES
   SPECIAL CIRCLE-I, ERNAKULAM – 682 015.

2. **DEPUTY COMMISSIONER**
   COMMERCIAL TAXES, ERNAKULAM – 682 015.

R1 & R2 BY GOVT. PLEADER SMT. K.T. LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 33735 of 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	:	COPY OF THE ANNUAL RETURN FOR 2013-14 FILED BY PETITIONER BEFORE THE 1ST RESPONDENT.
EXT.P2		COPY OF AUDIT REPORTS IN FORM 13 & 13A FOR 2013-14 FILED BY PETITIONER BEFORE THE 1ST RESPONDENT BY THE PETITIONER ALONG WITH ACKNOWLEDGMENT DATED 25-4-2015.
EXT.P3		COPY OF THE REQUEST LETTER DATED 21-5-2015 FILED BY THE PETITIONER ON 27-5-15 BEFORE THE IST RESPONDENT FOR REVISION OF THE RETURNS FOR 2013-14.
EXT.P4		COPY OF THE SHOW CAUSE NOTICE DATED 21-7-2015 SERVED ON THE PETITIONER ON 4-8-2015 BY THE IST RESPONDENT.
EXT.P5		COPY OF THE REPLY DATED 25-8-2015 FILED BY PETITIONER BEFORE THE IST RESPONDENT ON 26-8-2015.
EXT.P6		COPY OF THE ASSESSMENT ORDER NO. 32071679482/2013/14 DATED 31-8-2015 OF THE IST RESPONDENT SERVED ON THE PETITIONER ON 28-10-2015.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 33735 of 2015

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Dated this the 6th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 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 2013-14. The specific case of the petitioner in the writ petition is that, while he was served with Ext.P4 composite notice in connection with irregularities noticed in the annual returns filed by him, and the decision of the assessing authority to proceed with a best judgment assessment for the said assessment year, and he had filed a detailed reply (Ext.P5) pointing out that he had already preferred an application with a request for revision of his returns to correct certain anomalies which was not acceded to by the assessing authority and further, that in case the assessing authority wanted a clarification with regard to the figures shown by him in the return, he should be given an opportunity of producing the relevant records for substantiating his contention with regard to the correctness of the certificates, the assessing authority proceeded to pass Ext.P6 order, without giving him an opportunity of hearing as requested by him. It is therefore, his contention that Ext.P6 order is vitiated by the 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 that Ext.P6 order was passed pursuant to Ext.P4 notice issued to the petitioner. Ext.P4 notice is a composite notice that was issued to the petitioner clubbing the requirements under Sections 22 and 25 of the KVAT Act. In a recent decision of this Court in Shamon K.S. v. State of Kerala and Others **[2015 (5) KHC 318]**, this Court has found as follows:

> "4. Under the KVAT Act an assessee is expected to do a self-assessment of his tax liability for the return period. Unless on a scrutiny, the returns submitted by him, or the tax paid by him based on the said returns, is demonstrated to be incorrect or otherwise irregular, the self-assessment done by the assessee is treated as final. It is only when there is a discrepancy in the returns filed, or in the tax paid, that the revenue authorities are called upon to determine the tax liability of the assessee on best judgement basis. As the phrase itself would signify, an assessment on "best judgment basis" is to be resorted to only when all attempts, at finalising an assessment based on available material, fail. This is the scheme envisaged for completion of assessments under the KVAT Act and Rules, as is evident from a reading of Sections 21, 22, 24 and 25 of the KVAT Act read with Rules 34, 35 and 38 of the KVAT Rules.
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> 5. A reading of the aforementioned statutory provisions would indicate that where a return filed by a dealer is found to be

> defective or not accompanied by supporting documents or is found to be incorrect, the revenue authority can issue a notice to the dealer intimating him of the rejection of his returns, and providing him with an opportunity to file a fresh return, or for producing documents and accounts to prove the correctness of the return filed, within a period of 15 days from the date of notice. Thereafter, if no return is filed within the time granted, or the documents sought for are not produced, the revenue authority is expected to issue a fresh notice to the dealer intimating him of his decision to proceed with a best judgment assessment under S. 25 of the KVAT Act. This latter notice is essentially in the nature of a show cause notice, asking the dealer to show cause as to why the assessment should not be completed on best judgment basis. For the opportunity provided to the dealer to be reasonable and meaningful, the time granted to the dealer must be sufficient to enable him to appear before the authority concerned and show cause against the said proposal. No doubt, the time to be granted must necessarily be left to the discretion of the authority concerned. The discretion, however, is one that has to be exercised after taking into account the difficulties, if any, put forward by the dealer concerned and should not, in any event, be less than 7 days from the date of service of the notice on the dealer. It is disturbing to note that, notwithstanding the decision of this Court in **Suzion Infrastructure Service Ltd. v. Commerial Tax Officer (W.C), Ernakulam [2010 (3) KHC 299]** where the practice of revenue authorities, in issuing a composite notice calling for fresh returns/documents/accounts as well as for the hearing in connection with the best judgment assessment that is proposed, was deprecated, the revenue authorities continue to follow such an unfair and arbitrary procedure while completing assessments on best judgment basis.

4. In the instant case, while the petitioner had specifically requested for an opportunity to revise his returns so as to correct certain factual anomalies in the return, the said request was not acceded to by the respondents, notwithstanding the fact that the final assessment order for the assessment year in question had not

been passed. That apart, although the petitioner had sought for an opportunity of hearing when he could have produced documents to substantiate his contentions on merits, the said opportunity was also denied to the petitioner and the assessing authority proceeded to pass Ext.P6 order, without considering those documents. Under the said circumstances, I am of the view that Ext.P6 order cannot be legally sustained. Resultantly, I quash Ext.P6 order and directing the 1st respondent to pass fresh orders of assessment in relation to the petitioner for the assessment year 2013-14, 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 20.11.2015 with all the relevant records to substantiate his contentions on merits. The 1st respondent shall, pass orders as directed, within a period of one month thereafter.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /06.11.15