

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 33922 of 2015 (M)

PETITIONER:

**M/S. AIRFLEX SOLUTIONS, XXVII/499,
PANAMPILLY NAGAR, COCHIN - 682 036,
REPRESENTED BY ITS PARTNER, SRI.BIJOY DAVIS.**

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):

- 1. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, 2ND CIRCLE,
THRIPUNITHURA - 682 301.**
- 2. INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES, MATTANCHERY AT
MINI CIVIL STATION, ALUVA - 683 101.**
- 3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, CIVIL STATION,
KAKKANAD - 682 030.**
- 4. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO TAXES,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**

BY GOVERNMENT PLEADER SMT.LILLY.K.T

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

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: TRUE COPY OF ANNUAL E-RETURN DATED 26/6/2012 FOR THE YEAR 2011-12 UNDER THE KVAT ACT SUBMITTED BY PETITIONER BEFORE 1ST RESPONDENT.
- P2: TRUE COPY OF AUDITED FINANCIAL STATEMENT OF THE PETITIONER FOR THE YEAR 2011-12 SUBMITTED BEFORE 1ST RESPONDENT IN ACCORDANCE WITH LAW.
- P3: TRUE COPY OF COMPOUNDING PROCEEDINGS DATED 22/03/2015 PASSED U/S.74 OF THE KVAT ACT ISSUED TO PETITIONER BY 2ND RESPONDENT.
- P4: TRUE COPY OF NOTICE DATED 22/06/2015, PROPOSING BEST JUDGMENT ASSESSMENT U/S.25(1) OF THE KVAT ACT, ISSUED TO PETITIONER, BY 1ST RESPONDENT FOR THE YEAR 2011-12, BASED ON EXT.P3.
- P5: TRUE COPY OF REPLY DATED 10/7/2015 SUBMITTED BY PETITIONER BEFORE 1ST RESPONDENT, AGAINST EXT.P4 NOTICE, REQUESTING FOR A PERSONAL HEARING.
- P5(A): TRUE COPY OF E-MAIL COMMUNICATION DATED 25/9/2015 MADE BY A REGISTERED DEALER TO 1ST RESPONDENT IN UNDERTAKING HIS MISTAKE IN UPLOADING A SALE, BY MISTAKE WITH TIN OF PETITIONER, PENDING WITH OPTION FOR REVISED RETURN.
- P6: TRUE COPY OF ORDER DATED 22/9/2015 FOR THE YEAR 2011-12, ISSUED TO THE PETITIONER BY 1ST RESPONDENT, WITHOUT A PERSONAL HEARING, ALONG WITH A DEMAND NOTICE DATED 15/10/2015.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.33922 of 2015

Dated this the 11th day of November 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 assessment order passed in relation to the petitioner, under the KVAT Act, for the assessment year 2011-12. The sole ground of challenge against Ext.P6 order is that, before passing the said order, the petitioner was not afforded with an opportunity of personal hearing.

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

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that in Ext.P6 order, although there is a reference to the pre-assessment notice that was served on the petitioner wherein, the petitioner was given an opportunity of personal hearing on 07.07.2015, the facts in the writ petition would disclose that the petitioner had, in response to the pre-assessment notice, filed a reply dated

10.07.2015 and in the said reply, he had requested for a personal hearing, before completion of the assessment. In Ext.P6 order, the 1st respondent makes a reference to the reply dated 10.07.2015 that was preferred by the petitioner, but does not appear to have granted a personal hearing to the petitioner, after the said date. I therefore find that Ext.P6 order is vitiated on account of a non compliance with the rules of natural justice. Resultantly, I quash Ext.P6 order and direct the 1st respondent to complete the assessment in relation to the petitioner for the assessment year 2011-12 afresh, after affording him personal hearing. To enable the 1st respondent to do so, I direct the petitioner to appear before the 1st respondent at his office at 11 a.m., on 17.11.2015. The 1st respondent shall pass fresh orders as directed, within a month thereafter.

The writ petition is accordingly disposed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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