IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).NO. 34111 OF 2015 (L)

PETITIONER(S):

M/S.OJIN FOODS (P) LTD.
CONVENT ROAD, KOZHIKODE
REPRESENTED BY ITS MANAGING DIRECTOR, JUNAIS A.K.

BY ADV. SRI.R.RAMADAS

RESPONDENT(S):

1. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, KOZHIKODE-673 001.

2. THE COMMERCIAL TAX OFFICER
1ST CIRCLE, KOZHIKODE-PIN 673 001.

BY GOVERNMENT PLEADER SRI.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 34111 OF 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE COPY OF THE ASSESSMENT ORDER DATED 6/2/2013 ISSUED BY THE ASSESSING AUTHORITY IN RESPECT OF THE PERIOD 2010-11.

EXT.P2. TRUE COPY OF THE ORDER DATED 11/5/2015 IN VATA NO.126/2015 BEFORE THE 1ST RESPONDENT

EXT.P3. TRUE COPY OF THE NOTICE DATED 7/9/2015 UNDER SECTION 25(1) OF THE KVAT ACT ISSUED BY THE 2ND RESPONDENT

EXT.P4. TRUE COPY OF THE APPLICATION DATED 23/9/2015 BEFORE THE 2ND RESPONDENT

EXT.P5. TRUE COPY OF THE ORDER DATED 25/9/2015 BY THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.34111 of 2015

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Dated this the 12th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 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 2010-2011. The grievance of the petitioner in the writ petition is essentially that before passing Ext.P5 order, the 2nd respondent Assessing Officer did not afford the petitioner an opportunity of being heard. It is specifically pointed out that against an earlier order of assessment, the petitioner had approached the appellate authority, who by Ext.P2 order had remanded the matter to the 2nd respondent assessing authority to verify certain factual particulars and pass fresh orders after hearing the petitioner. It was pursuant to the said appellate order that the petitioner was served with Ext.P3 notice for completing the assessment. The said notice was served on the petitioner only on 16.09.2015 and the petitioner was asked to appear for a hearing on 23.09.2015. The petitioner then sought for 15 days time for the purposes of getting the necessary documents for putting forward his case, through Ext.P4 letter. The 2nd respondent, however, without giving any reply to Ext.P4 letter, proceeded to complete the assessment against the petitioner without affording the petitioner an opportunity of hearing, and passed Ext.P5 order dated

25.09.2015. It is the contention of the learned counsel for the petitioner that Ext.P5 order is vitiated by a 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, pursuant to Ext.P3 notice served on the petitioner on 16.09.2015, the petitioner had sent Ext.P4 letter requesting for 15 days time from 16.09.2015 to produce the necessary documents and appear for a hearing in connection with the completion of the assessment. The time sought for was only till 03.10.2015. Although the said letter was sent to the 2nd respondent, the 2nd respondent appears to have ignored the same and proceeded to pass Ext.P5 order without hearing the petitioner. I find that, there was no urgency that required the petitioner to pass Ext.P5 order in such haste, especially when there was a specific request of the petitioner for affording 15 days time for producing the necessary documents. Accordingly, I quash Ext.P5 order and direct the 2nd respondent to complete the assessment in relation to the petitioner for the assessment year 2010-2011 afresh after hearing the petitioner. To enable the 2nd respondent to do so, I direct the petitioner to appear before the 2nd respondent at his office at 11 am on 18.11.2015. The 2nd respondent shall pass fresh orders as directed within a period of one month thereafter.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/12.11.15