IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 34576 of 2014 (V)

PETITIONER :

SHANIDA SALIM,
W/O.M.K.SALIM (PROPRIETOR), AGED 42 YEARS,
M/S.BLACK STONE GRANITES,
MUNDETH THECKEVEEDU, VP 1/329, THERMALA,
WEST VENGOLA P.O., PERUMBAVOOR, PIN-683 556,
ERNAKULAM DISTRICT.

BY ADVS.SRI.K.A.MOHAMED HARIS
SRI.C.J.VARGHESE VINU

RESPONDENT(S):

1. **INTELLIGENCE OFFICER,**
   SQUAD NO. IV (OF MATTANCHERY),
   DEPARTMENT OF COMMERCIAL TAXES, MINI CIVIL STATION,
   ALUVA, ERNAKULAM DISTRICT-683 101.

2. **THE COMMERCIAL TAX OFFICER,**
   DEPARTMENT OF COMMERCIAL TAXES, II CIRCLE,
   PERUMBAVOOR, ERNAKULAM DISTRICT-683 542.

3. **STATE OF KERALA,**
   REPRESENTED BY TRHE SECRETARY (TAXES),
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R1 TO R3 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 34576 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: COPY OF THE PERMISSION GRANTED BY THE 2ND RESPONDENT IN FORM 1E TO PAY TAX UNDER COMPOUNDING SCHEME.

P1(A): COPY OF THE PROCEEDINGS PERMITTING PAYMENT IN COMPOUNDED SCHEME.

P2: COPY OF THE RECEIPTS SHOWING PAYMENT OF TAX IN COMPOUNDED SCHEME.

P3: COPY OF THE LETTER INTIMATING INSTALLATION OF NEW MACHINERY DT. 27/1/2014.

P4: COPIES OF THE SALE AGREEMENT AND COPIES OF THE PURCHASE BILLS OF THE PARTS DATED FROM OCTOBER 2013 TO JANUARY 2014.

P5: COPY OF THE SHOP INSPECTION REPORT DATED 4TH FEBRUARY 2014.

P6: COPY OF THE SUMMONS ISSUED BY THE 1ST RESPONDENT IN FORM 22 TO APPEAR ON 20/2/2014.

P7: COPY OF THE LETTER SUBMITTED BEFORE 1ST RESPONDENT SEEKING ADJOURNMENT OF HEARING DATE ON 20/2/2014.

P8: COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT IMPOSING PENALTY DATED 20/3/2014.

P9: COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER BEFORE 1ST RESPONDENT DATED 29.3.2014.

P10: COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT IMPOSING PENALTY ON THE PETITIONER DATED 16.10.2014.

P10(A): COPY OF THE DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT 14/11/2014.

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. 34576 of 2014 (V)

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Dated this the 13th day of January, 2015

JUDGMENT

The petitioner impugns Ext.P10 order of penalty in the present writ petition. The only contention that is urged by the petitioner is that, prior to the passing of Ext.P10 order, the petitioner was not given an effective opportunity of hearing before the first respondent.

2. When the matter came up for admission, this Court had directed the parties to file statements with regard to the contention that there was no opportunity granted to the petitioner for hearing. In response to the said direction of this Court, the petitioner has filed an affidavit, wherein he states that before issuing Ext.P10 order, a notice was personally served on him on 11.08.2014, giving an opportunity of personal hearing with three days notice. It is his contention that in so far as the said notice made it clear, that no further adjournments will be allowed, he did not do anything pursuant to the said notice. It is also his contention that, although Ext.P10 order refers to two earlier notices having been served on the petitioner, the said notices were not actually served on him. Thus, Ext.P10 order is impugned in the writ petition on the ground of alleged non-compliance with the rules of natural justice.

3. I have heard Sri.K.A.Mohamed Haris, learned counsel for the petitioner and Smt.Sobha Annamma Eappen, learned Governmetn Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that in the instant case, petitioner has got an effective alternative remedy against Ext.P10 order by way of a revision under the Kerala Value Added Tax Act, 2003. Although, the petitioner would vehemently contend that he was not given an effective opportunity of hearing prior to the passing of Ext.P10 order, the findings in Ext.P10 order itself, as also the averments of the petitioner in the affidavit filed before this Court, clearly reveal that notice was served on the petitioner personally in which, there was time granted of three days for filing the necessary documents. If it was in fact the case of the petitioner that, the time granted was too short for producing documents, it was incumbent upon the petitioner to respond to the said notice and inform the first respondent of the fact that the time granted was too short for the purpose of producing the records. This not having been done, the petitioner cannot now complain that there was non-compliance with the requirements of natural justice. Accordingly, leaving it open to the petitioner to pursue his alternate remedy under the KVAT Act against Ext.P10 order of

penalty, I dismiss this writ petition as not maintainable. If the petitioner files a statutory revision against Ext.P10 order of the first respondent, together with a stay petition, after complying with all the necessary formalities, within a period of two weeks from the date of receipt of a copy of this judgment, then the revisional authority under the KVAT Act shall consider the stay petition filed by the petitioner and pass orders on the same, after hearing the petitioner, within a period of two months thereafter. Recovery proceedings, if any initiated against the petitioner pursuant to Ext.P10 order, shall be kept in abeyance for a period of two weeks to enable the petitioner to approach the revisional authority under the Act.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/13/01/

/TRUE COPY/

P.A.TO JUDGE