IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 34524 of 2015 (M)

PETITIONER:

U.PRADEEP, EX-PROPRIETOR,
THANA DIGITAL STUDIO AND COLOR LAB,
NIRMALYAM, OPP. GOVT. AYURVEDA HOSPITAL,
MAVINCHODU, P.O. THRIKKUR, THRISSUR.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT:

THE COMMERCIAL TAX OFFICER(WC)
THRISSUR- 680 004.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 34524 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1- **COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2012-13 ISSUED BY THE RESPONDENT TO THE PETITIONER DATED 29.9.2015.**

P1(A)- **COPY OF THE POSTAL COVER ISSUED BY THE RESPONDENT RETURNED THE SAME BY POSTAL DEPARTMENT.**

RESPONDENT(S)' EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 34524 of 2015
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Dated this the 17th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P1 order of assessment passed in relation to the petitioner for the assessment year 2012-13 under the Kerala Value Added Tax Act. The grievance of the petitioner is that, before passing Ext. P1 order, the petitioner was not served with a pre-assessment notice, and therefore, Ext.P1 order was passed without considering the objections of the petitioner as also without affording the petitioner an opportunity of being heard.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondent.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find from Ext.P1 order that, there is no reference therein to any hearing offered to the petitioner. The order refers to a pre-assessment proposal that was communicated to the assessee vide a notice dated 26.08.2015, but returned by the postal authority as 'unclaimed'. Counsel for the petitioner would submit that the address of petitioner's residence

had changed from the erstwhile location, to the present address at Thrikkur and the postal authority had while serving Ext.P1 assessment order on the petitioner, redirected the assessment order from the erstwhile address of the petitioner to the present address. It is contended that the same procedure could have been adopted even in respect of the pre-assessment notice and it was on account of not adopting the said procedure, that the petitioner did not get the pre-assessment notice. It is not in dispute, however, that the petitioner was not served with a pre-assessment notice and also that the petitioner was not heard prior to the passing of Ext.P1 order.

Under such circumstances, I am of the view, that the petitioner can be afforded an opportunity of filing objections, and getting the benefit of a personal hearing before the respondent, prior to the completion of the assessment against him. I, therefore, quash Ext.P1 order and direct the respondent to pass fresh orders of assessment in relation to the petitioner for the assessment year 2012-13 under the KVAT Act. To enable the respondent to do so, I direct the petitioner to appear before the respondent at his Office at 11 AM on 30.11.2015. It will be open to the petitioner to file a detailed objection to the assessment proposal on or before that date. The respondent shall pass fresh orders as directed, within a month after the date of hearing.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /17.11.15