

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. 34525 of 2015 (M)

PETITIONER:

**K.P.CHANDRADASAN,
GOVERNMENT CONTRACTOR,
VISWA HINDU BHAVAN, CHALAPPURAM,
KOZHIKODE- 673 002.**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.A.RIYAS (MANJAPPARA)**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER(WC),
KOZHIKODE - 673 001.**
- 2. DEPUTY COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES,
KOZHIKODE - 673 001.**

BY GOVERNMENT PLEADER SRI.RANJITH

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

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1- COPY OF ASSESSMENT ORDER FOR THE YEAR 2005-06 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 3.8.2009.
- P2- COPY OF APPELLATE ORDER ISSUED BY THE 2ND RESPONDENT DATED 27/03/2013.
- P3- COPY OF LETTER FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 16/09/2015.
- P4- COPY OF APPLICATION FILED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT 16/09/2015.
- P5- COPY OF LETTER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 14/10/2015.
- P6- COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT CONTAINING THE ENDORSEMENT OF SRI. SREEJESH DATED 27/03/2013.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 34525 of 2015

Dated this the 17th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P2 first appellate order passed in relation to the petitioner under the Kerala Value Added Tax Act. The grievance of the petitioner in the writ petition is essentially that Ext.P2 order was passed without hearing the authorised representative of the petitioner, and the petitioner was not intimated of the date of hearing prior to passing of the said order. It is stated by the learned counsel appearing for the petitioner that the notice intimating the date of hearing of the appeal was served on a person, who was earlier the authorised representative of the petitioner, but who was not authorised by the petitioner to appear on his behalf at the appellate stage. It is under these circumstances that the petitioner impugns Ext.P2 order and seeks a direction to the first appellate authority to rehear the matter and pass fresh orders in the appeal preferred before him.

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

On a consideration of the facts and circumstances of the case

as also the submissions made across the bar, and finding that Ext.P2 order is one, that is passed as early as in March, 2013, I am of the view that the petitioner can be relegated to his alternate remedy of preferring a second appeal before the appellate tribunal under the KVAT Act. I take note of the fact that the appellate tribunal under the KVAT Act has power to condone the delay in the filing of an appeal against Ext.P2 order. Thus, I direct that, if the petitioner prefers an appeal before the appellate tribunal against Ext.P2 order, within a period of one month from today, then the appellate tribunal shall consider the same in accordance with law. The writ petition in its challenge against Ext.P2 order is dismissed. To enable the petitioner to pursue his appellate remedy, I direct that the recovery steps for recovery of amounts confirmed against the petitioner by Ext.P2 order, shall be kept in abeyance for a period of one month.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE