IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 34777 of 2015 (V)

PETITIONER(S):

M/S. REAL TOOLS, PALLATH BUILDING,
KACHERIPPADY, ERNAKULAM DISTRICT,
REPRESENTED BY IT'S PARTNER JASEERA P.K.

BY ADVS.SRI.P.N.DAMODARAN NAMBOODIRI
SRI.P.UNNIKRISHNAN (THRISSUR)

RESPONDENT(S):

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1. THE COMMERCIAL TAX OFFICER, FIRST CIRCLE, DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM - 682 011.

2. THE INSPECTING ASST. COMMISSIONER, COMMISSIONER TAXES DEPARTMENT, KAKKANAD, ERNAKULAM - 682 030.

3. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES DEPARTMENT, COMMERCIAL TAX COMPLEX, THEVARA, ERNAKULAM - 682 013.

BY GOVERNMENT PLEADER SRI.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 34777 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE POWER OF ATTORNEY DTD.8.10.2004 ISSUED BY THE PETITIONER FIRM TO MR.MUSTHAFA, H/O SULFA ABDUL RAHMAN.

EXT.P2: TRUE COPY OF THE DEATH CERTIFICATE NO.D0140171-1204101 DTD 26.4.2012 ISSUED BY THE GOVERNMENT OF KERALA TO THE PARTNER OF THE PETITIONER FIRM.

EXT.P3: TRUE COPY OF THE NOTICE NO.32071584824/12-13 DTD.17.6.2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P4: TRUE COPY OF THE ADJOURNMENT REQUEST DTD.29.6.2015 FILED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P5: TRUE COPY OF THE ASSESSMENT ORDER NO.32071584824/12-13 DTD.27.10.2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 34777 of 2015
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Dated this the 18th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 assessment order passed in relation to the petitioner for the assessment year 2012-13 under the Kerala Value Added Tax Act. The grievance of the petitioner against Ext.P5 order is essentially that prior to the passing of Ext.P5 order, the petitioner was not given an effective opportunity of being heard and therefore, Ext.P5 order is vitiated by a non-compliance with the rules of natural justice.

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

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find from Ext.P5 order that a pre-assessment notice was issued to the petitioner on 29.06.2015, and receipt of the same was acknowledged by the petitioner as well. Although objections were called for in the said notice, and an opportunity of hearing was also afforded to the petitioner, the petitioner did not avail of the opportunity. It was

under those circumstances that the 1st respondent completed the assessment against the petitioner and passed Ext.P5 order. Inasmuch as there is no jurisdictional error noticed, necessitating an interference with Ext.P5 order in these proceedings under Article 226 of the Constitution of India, I dismiss the writ petition in its challenge against Ext.P5 order. Counsel for the petitioner would submit that, he would require some time to pursue his appellate remedy against Ext.P5 order. Taking note of the said submission, I direct that recovery steps for recovery of amounts confirmed against the petitioner by Ext.P5, shall be kept in abeyance for a period of one month, so as to enable the petitioner to pursue his appellate remedy against Ext.P5 order.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /18.11.15