

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).NO. 35039 OF 2014 (D)

PETITIONER(S):

METRO PLUS,
40/3314, BROADWAY
ERNAKULAM. (REPRESENTED BY K.N. MARZOOK, PARTNER).

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR

RESPONDENT(S):

1. INTELLIGENCE OFFICER
SQUAD NO.V, DEPARTMENT OF COMMERCIAL TAXES
ERNAKULAM-682015.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .NO. 35039 OF 2014 (D)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1. TRUE COPIES OF THE SHOP INSPECTION REPORTS DATED 18-8-2009 OF THE 1ST RESPONDENT.

P2. TRUE COPY OF THE NOTICE IN FORM NO. 17 DATED 5-9-2009 ISSUED BY THE 1ST RESPONDENT.

P3. TRUE EXTRACTS OF THE BOOKS OF ACCOUNTS FILED BY THE PETITIONER TO THE 1ST RESPONDENT.

P4. TRUE COPY OF THE NOTICE IN FORM NO.17 DATED 2-7-2010 ISSUED BY 1ST RESPONDENT.

P5. TRUE COPY OF THE NOTICE IN FORM NO. 17 DATED 1-1-2011 ISSUED BY 1ST RESPONDENT YEAR 2009-2010.

P6. TRUE COPY OF THE NOTICE IN FORM NO. 17 DATED 29-10-2011 ISSUED BY 1ST RESPONDENT.

P7. TRUE COPY OF THE NOTICE IN FORM NO. 17 DATED 12-11-12 ISSUED BY 1ST RESPONDENT.

P8. TRUE COPY OF THE SHOW CAUSE NOTICE DATED 17-11-14 ISSUED BY 1ST RESPONDENT.

P9. TRUE COPY OF THE PENALTY ORDER NO. CRV 11/2009-10 DATED 2-11-14 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.35039 of 2014

.....
Dated this the 30th day of January, 2015

J U D G M E N T

The writ petition is filed challenging Ext.P9 order passed by the 1st respondent imposing a penalty under the Kerala Value Added Tax Act on the petitioner for the assessment year 2009-2010. The specific case of the petitioner in the writ petition is that prior to passing Ext.P9 order, he was not heard. It is also the case of the petitioner that, pursuant to Ext.P8 notice that was served on him, he had submitted a reply and proposed to appear before the 1st respondent on 02.12.2014. When he went to the office of the 2nd respondent on 02.12.2014, however, he was informed that Ext.P9 order had already been passed without considering any reply, and hence, it was not possible to hear the petitioner on that date. It is the case of the petitioner that insofar as Ext.P9 order has been passed without considering his objections, and without hearing him, the same is vitiated.

2. I have heard Sri.K.N.Sreekumaran, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that although there is nothing to indicate that the petitioner had in fact attended the office of the 1st respondent with a reply, as stated by him, there was no urgency for the 1st respondent to pass the said order without considering the objections of the petitioner, or affording him an opportunity of hearing. In that view of the matter, I quash Ext.P9 order and direct the 1st respondent to reconsider the matter after taking note of the objections, if any, filed by the petitioner and also after affording the petitioner an opportunity of being heard. The 1st respondent shall pass orders as directed within a period of two months from the date of receipt of a copy of this judgment. To enable the 1st respondent to do so, the petitioner shall appear before the 1st respondent at 11 am on 18.02.2015

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

