

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. 34881 of 2015 (I)

PETITIONER:

**RIYAZ T.K,
M/S.NEW FRIENDS CHICKEN AGENCIES,
P.W.D.OFFICE ROAD, KALPETTA,
WAYANAD DISTRICT - 673 121.**

BY ADV. SRI.P.N.DAMODARAN NAMBOODIRI

RESPONDENT(S):

- 1. THE INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
WAYANAD AT KALPETTA - 673 121.**
- 2. DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
WAYANAD AT KALPETTA - 673 121.**

BY GOVERNMENT PLEADER SRI.R.RANJITH

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

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF THE AUDIT REPORT IN FORM 13 & 13A
DATED 10.2.2014 FOR THE YEAR 2012-13 BEFORE THE
1ST RESPONDENT, BY THE PETITIONER.
- EXT. P1(A) : TRUE COPIES OF THE AUDIT REPORT IN FORM 13 & 13A
DATED 25.1.2015 FOR THE YEAR 2013-14 BEFORE THE
1ST RESPONDENT, BY THE PETITIONER.
- EXT. P2 : TRUE COPY OF THE NOTICE NO.32140418152/2013-14
DATED 11.9.2015 FOR THE YEAR 2013-14 TO THE PETITIONER
ISSUED BY THE 1ST RESPONDENT.
- EXT. P2(A) : TRUE COPY OF THE NOTICE NO.32140418152/2012-13
DATED 16.9.2015 FOR THE YEAR 2012-13 TO THE PETITIONER
ISSUED BY THE 1ST RESPONDENT.
- EXT. P3 : TRUE COPY OF THE REPLY DATED 30.9.2015 FOR THE YEARS 2012-13
FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT. P3(A): TRUE COPY OF THE REPLY DATED 30.9.2015 FOR THE YEARS 2013-14
FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT. P4 : TRUE COPY OF THE ORDER NO.32140418152/2012-13 FOR THE YEAR
2012-13 DATED 14.10.2015 ISSUED BY THE 1ST RESPONDENT TO THE
PETITIONER.
- EXT. P4(A) : TRUE COPY OF THE ORDER NO.32140418152/2013-14 FOR THE YEAR
2013-14 DATED 14.10.2015 ISSUED BY THE 1ST RESPONDENT TO THE
PETITIONER.
- EXT. P5 : TRUE COPY OF THE JUDGMENT OF THE HON'BLE DIVISION BENCH IN
WRIT APPEAL NO.1370/2011 DATED 2.11.2011 OF C.U.MATHAI
V/S.COMMERCIAL TAX OFFICER AND OTHERS.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.34881 of 2015

.....
Dated this the 18th day of November, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P4 and P4(a) orders of assessment passed in relation to the petitioner for the assessment years 2012-2013 and 2013-2014 under the Kerala Value Added Tax Act. The grievance of the petitioner in the writ petition is that before passing Exts.P4 and P4(a) orders, the 1st respondent did not afford the petitioner an opportunity of hearing although the petitioner specifically asked for the same in the reply filed to the pre-assessment notice.

2. I have heard the learned counsel for the petitioner and also 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 the petitioner was served with a pre-assessment notice dated 16.09.2015, and the petitioner had filed a reply to the same on 30.09.2015, in the said reply the petitioner had specifically sought for an opportunity of personal hearing for substantiating his contentions on merits. The said personal hearing that was sought for by the petitioner, does not appear to have been granted by the 1st respondent in Exts.P4 and P4(a) orders, as there is no mention

of any hearing afforded to the petitioner in the said orders. Under the said circumstances, I am of the view that, Exts.P4 and P4(a) orders cannot be legally sustained. I, accordingly, quash Exts.P4 and P4(a) orders and direct the 1st respondent to pass fresh orders of assessment in relation to the petitioner for the assessment year 2012-2013 and 2013-2014 under the Kerala Value Added Tax Act after hearing the petitioner. To enable the 1st respondent to do so, I direct the petitioner to appear before the 1st respondent at his office at 11 am on 30.11.2015. The 1st respondent shall pass orders as directed within a month thereafter.

A.K.JAYASANKARAN NAMBIAR
JUDGE

