IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 34938 of 2015 (N)

PETITIONER :

M/S.NAVABHARAT SYSTEMS AND DEVICES (P) LIMITED.,
V/8, POLLACHI ROAD, ELAPPULLY, PALAKKAD,
REPRESENTED BY ITS MANAGING DIRECTOR,
SRI.A.V.RAJAPPAN.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT :

THE ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE, COMMERCIAL TAXES,
PALAKKAD-678 001.

BY GOVERNMENT PLEADER SMT. LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 34938 of 2015 (N)
--

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : **COPY OF THE NOTICE UNDER SECTION 25(1) OF THE KVAT ACT ISSUED BY RESPONDENT DTD. 11.6.2015.**

P2 : **COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE RESPONDENT DTD. 14.7.2015.**

P3 : **COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2012-13 ISSUED BY THE RESPONDENT DTD. 16.10.2015.**

P4 : **COPY OF THE JUDGMENT IN WPC NO.31051/2014 DTD. 21.11.2014.**

P5 : **COPY OF THE ANNUAL RETURN FILED BY THE PETITIONER DTD. 28.6.2013.**

P6 : **COPY OF THE DEMAND NOTICE IN FORM NO.12 ISSUED BY THE RESPONDENT DTD. 16.10.2015.**

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

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.
==
W.P.(C). No. 34938 of 2015
===
Dated this the 23rd day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P1 order of assessment passed in relation to the petitioner under the KVAT Act for the assessment year 2012-13. The grievance of the petitioner is essentially that, before passing Ext.P3 order, the petitioner was not put to notice of the material that was relied against him, while passing Ext.P3 order. It is the case of the petitioner therefore that, Ext.P3 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.

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 a mention made in Ext.P3 of a pre assessment notice having been served on the petitioner, and the petitioner having been heard prior to passing of Ext.P3 order, it is the definite case of the petitioner that, the material that was sought to be relied on against him was never put to him. Although the petitioner has not produced any material to substantiate this contention, on a perusal of Ext.P3 order, I find that there is a reference to details of inter state transactions, which have been relied on against the petitioner based on the check post data available in the KVATIS Software. A perusal of the said details does not reveal any material to link the said purchases to the petitioner. This is more so because, there is no reference to any invoice number or TIN number that could link the purchases with the petitioner. There is also a purchase of poultry feed, which has been attributed to the petitioner, who is a dealer in door frames and window frames made of iron and steel. The details shown in Ext.P3 assessment order, therefore, cannot be relied upon in the absence of any co-relation of the said details with transactions attributable to the petitioner. Under the said circumstances, I quash Ex.P3 order and direct the respondent to complete the assessment in relation to the petitioner for the assessment year 2012-13 under the KVAT Act, afresh, after hearing the petitioner. It is made clear that the respondent shall, before completing the assessment against the petitioner, furnish the petitioner with details of the transactions, that are sought to be used against him for the purposes of completing the assessment in relation to the petitioner. To enable the respondent to pass fresh orders in the matter, I direct the petitioner to appear before the office of the respondent at 11 AM on 03.12.2015, for receiving the documents that are sought to be relied upon against him in the assessment. Thereafter, the petitioner shall once again appear before the respondent at his office at 11 AM on 10.12.2015, for a hearing in connection with the assessment. The respondent shall, thereafter, pass fresh orders as directed within a month from the date of hearing.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /23.11.15