IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

WP(C).No.35373 of 2014 (V)

PETITIONER:

N.K.ANTO,PROPRIETOR,
M/S.NINTO HARDWARES,PERINJANAM,
THRISSUR DISTRICT,PIN:680 683.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENTS:
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1. **COMMERCIAL TAX OFFICER,**
COMMERCIAL TAXES,KODUNGALLUR,
THRISSUR DISTRICT,PIN:686 664.

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

BY SENIOR GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.35373 of 2014 (V)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1:TRUE COPY OF AUDITED FINANCIAL STATEMENT OF HEAD OFFICE AT PERINJANAM OF THE PETITIONER FOR THE YEAR ENDED 31ST MARCH 2011.

EXHIBIT-P1(a):TRUE COPY OF AUDITED FINANCIAL STATEMENT OF BRANCH AT CHELOOR, OF THE PETITIOENR FOR THE YEAR ENDED 31ST MARCH 2011.

EXHIBIT-P1(b):TRUE COPY OF CONSOLIDATED AUDITED FINANCIAL STATEMENT, OF THE PETITIONER FOR THE YEAR ENDED 31ST MARCH 2011.

EXHIBIT-P2:TRUE COPY OF DEED OF PARTNERSHIP DATED 23.3.2011 WHEREIN BRANCH AT CHELOOR TAKEN OVER AS A GOING CONCERN WITH EFFECT FROM 1.4.2012.

EXHIBIT-P3:TRUE COPY OF AUDITED FINANCIAL STATEMENT OF THE PETITIONER FOR THE YEAR ENDED 31ST MARCH 2012.

EXHIBIT-P4:TRUE COPY OF NOTICE U/S.25A OF THE KVAT ACT ISSUED TO THE PETITIONER BY THE IST RESPONDENT FOR THE YEAR 2011-12.

EXHIBNIT-P4(a):TRUE COPY OF NOTICE U/S.67 OF THE KVAT ACT ISSUED TO THE PETITIONER BY THE IST RESPONDENT FOR THE YEAR 2011-12, ISSUED ALONG WITH EXT.P4.

EXHIBIT-P5:TRUE COPY OF REPLY TO EXT.P4 SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT, IN EXPLAINING THE TAKEOVER OF BRANCH.

EXHIBIT-P5(a): COPY OF REPLY TO EXT P4(a) SUBMITTED BY THE PETITIONER, BEFORE THE IST RESPONDENT, FOR DROPPING PENAL ACTION, PROPOSED.

EXHIBIT-P6:TRUE COPY OF ORDER DATED 21.11.2014 ISSUED TO THE PETITIONER ON 9.12.2014 COMPLETED U/S.25A OF THE KVAT ACT, BY THE IST RESPONDENT.

EXHIBIT-P6(a):TRUE COPY OF PENALTY DATED 21.11.2014 IMPOSED U/S. 67 OF THE KVAT ACT, ISSUED TO THE PETITIONER, BY THE IST RESPONDENT, ON 9.12.2014.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.35373 of 2014

Dated this the 6th day of January, 2015

J U D G M E N T

The petitioner impugns Exts.P6 and P6(a), assessment order and penalty order respectively, on the ground that the said orders were passed on grounds that were different from that which was communicated to the petitioner in the notices that preceded it. It is also the case of the petitioner that, prior to passing the said orders, the petitioner was not heard. The aforesaid orders are impugned in the writ petition inter alia on the ground of non-compliance with the principles of natural justice.

2. I have heard Sri.Tomson T.Emmanuel, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that insofar as Exts.P6 and P6(a) orders have been passed on grounds, which are different from what was communicated to the petitioner in the notices that were issued to him proposing the completion of assessment and imposition of penalty, the said orders

are vitiated on account of non-compliance with the principles of natural justice. It is also the specific contention of the petitioner that he was not heard prior to the passing of the said orders. Although, the learned Government Pleader, on instructions, would submit that the petitioner was actually afforded an opportunity of hearing, this fact is not borne out in the orders passed by the 1st respondent. In that view of the matter, I quash Exts.P6 and P6(a) orders and direct the 1st respondent to consider the matter afresh, after hearing the petitioner with respect to all the grounds on which the 1st respondent proposes to finalise the assessment order and the penalty order. The 1st respondent shall pass fresh orders in the matter within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/