IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 35588 of 2015 (W)

PETITIONER(S):

M/S.PARLE AGRO PVT. LTD., 5/188,
MEPPARAMBA, PIRAYIRI P.O., PALAKKAD,
HAVING ITS CORPORATE OFFICE AT
OFF WESTERN EXPRESS HIGHWAY,
SAHAR- CHAKALA ROAD, PARSIWADA,
ANDHERI (E), MUMBAI-400 099,
REPRESENTED BY ITS ASSISTANT VICE PRESIDENT
TAXATION KRISHNAN SHESHADRI.

BY SRI.ARSHAD HIDAYATHULLAH, SENIOR ADVOCATE.
ADV. SRI.PREMJIT NAGENDRAN.

RESPONDENT(S):

ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE, COMMERCIAL TAXES,
PALAKKAD-678 002.

BY GOVT. PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 35588 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	**COPY OF THE JUDGMENT PASSED BY THIS HONOURABLE COURT DATED 31/08/2015 IN WP(C).NO.26279/2015.**
EXT.P2	**COPY OF THE ASSESSMENT ORDER NO.32090580088/2010-11 ISSUED BY RESPONDENT DATED 09/11/2015 FOR THE YEAR 2010-11.**
EXT.P3	**COPY OF THE ASSESSMENT ORDER NO.32090580088/2011-12 ISSUED BY RESPONDENT DATED 09/11/2015 FOR THE YEAR 2011-12.**
EXT.P4	**COPY OF THE ASSESSMENT ORDER NO.32090580088/2012-13 ISSUED BY RESPONDENT DATED 09/11/2015 FOR THE YEAR 2012-13.**
EXT.P5	**COPY OF THE ASSESSMENT ORDER NO.32090580088/2013-14 ISSUED BY RESPONDENT DATED 09/11/2015 FOR THE YEAR 2013-14.**
EXT.P6	**COPY OF THE ASSESSMENT ORDER NO.32090580088/2014-15 ISSUED BY RESPONDENT DATED 09/11/2015 FOR THE YEAR 2014-15.**
EXT.P7	**COPY OF THE ASSESSMENT ORDER NO.32090580088/2015-16 (APRIL 15) ISSUED BY RESPONDENT DATED 09/11/2015 FOR THE MONTH OF APRIL 2015.**
EXT.P8	**COPY OF THE ASSESSMENT ORDER NO.32090580088/2015-16 (MAY 15) ISSUED BY RESPONDENT DATED 09/11/2015 FOR THE MONTH OF MAY 2015.**
EXT.P9	**COPY OF THE ASSESSMENT ORDER NO.32090580088/2015-16 (JUNE 15) ISSUED BY RESPONDENT DATED 09/11/2015 FOR THE MONTH OF JUNE 2015.**

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.35588 of 2015

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Dated this the 25th day of November 2015

JUDGMENT

The challenge in the writ petition is against Exts.P2 to P9 assessment orders that have been passed in relation to the petitioner for the assessment years 2010-11 to 2015-16. The grievance of the petitioner in the writ petition is essentially that, while by Ext.P1 judgment, this Court had directed the respondents to await the clarification of the authority for clarification on the issue of classification of the goods for the purposes of tax, under the KVAT Act, and to pursue further proceedings pursuant to the pre-assessment notices, only after the said order by the authority for clarification was communicated to the petitioner, the respondent has, without waiting for the order of the authority for clarification to be communicated to the petitioner, proceeded to pass Ext.P2 to P9 assessment orders, without even hearing the petitioner. It is the case of the petitioner, therefore, that the impugned orders are vitiated by a non-compliance with the rules of natural justice.

2. I have heard the learned senior counsel Sri.Arshad

Hidayathullah, duly instructed by Adv.Premjit Nagendran for the petitioners and the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that Exts.P2 to P9 orders passed by the respondents cannot be legally sustained. It is trite that even in a matter, where the respondents are called upon to finalise an assessment on best judgment basis, a reasonable period of at least 7 days has to be afforded to the assessee for showing cause against the proposed assessment. In the instant case, while the order said to have been passed by the authority for clarification was not communicated to the petitioner, even going by the findings in Ext.P2 to P9 orders, the said order of the authority for clarification was passed only on 06.11.2015. The impugned orders of assessment are all dated 09.11.2015, which is barely three days after the date of the clarification order. It is not in dispute that the petitioner was not heard prior to passing of the impugned orders. I, therefore see no reason to sustain Exts.P2 to P9 orders. I, therefore, quash Ext.P2 to P9 orders and direct the respondents to pass fresh orders after ensuring that the petitioner is served with a copy of the clarification oder dated 06.11.2015, and giving the petitioner a minimum period of 15 days for filing its objections against the said order, and then

hearing the petitioner on a date, due intimation of which shall be given to the petitioner.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/