IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 35892 of 2015 (J)

PETITIONER:

M/S. FRIENDS FANCY LIGHT HOUSE,
M.P.ROAD, KOZHIKODE,
REPRESENTED BY ITS MANAGING PARTNER
MR.GEORGE.

BY ADVS.SMT.K.LATHA
SMT.M.K.HAJARA
SRI.C.RAMACHANDRAN

RESPONDENT(S):
----

1. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM - 695 001.

2. COMMERCIAL TAX OFFICER, 2ND CIRCLE, COMMERCIAL TAXES, KOZHIKODE, CALICUT - 673 006.

3. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, JAWAHAR NAGAR, CALICUT - 673 006.

4. THE REVENUE RECOVERY OFFICER/ INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL TAXES, KOZHIKODE, CALICUT - 673 006.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 35892 of 2015 (J)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : THE TRUE COPY OF THE NOTICE U/S.25(1) OF THE KVAT ACT 2003 FOR THE YEAR 2010-2011 DATED 25.9.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT. P2 : THE TRUE COPY OF THE RERPLY DATED 26TH OCTOBER 2015 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT AGAINST THE P1 ARE ASSESSMENT NOTICE.

EXT. P3 : THE TRUE COPY OF THE ASSESSEMENT ORDER NO.32110793662/10-11 DATED 30.10.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT. P4 : THE TRUE COPY OF THE ANNUAL RETURN IN FORM 10 FOR THE YEAR 2010-2011 FILED BY THE PETITIONER ALONG WITH FORM 13 AND FORM 13A FOR THE YEAR 2010-2011.

EXT. P5 : THE TRUE COPY OF THE COMPLAINANT FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT DATED 7TH DAY OF NOVEMBER.

EXT. P6 : THE TRUE COPY OF THE DEMAND NOTICE DATED 31.10.2015 BASED ON THE P3 ASSESSMENT ORDER FOR THE YEAR 2010-2011 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

==

W.P.(C). No. 35892 of 2015

==

Dated this the 27th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 assessment order passed in relation to the petitioner for the assessment year 2010-11. The grievance of the petitioner against Ext.P3 order is essentially that the petitioner was not afforded an effective opportunity of hearing before the 2nd respondent assessing authority. It is therefore, contended that, Ext.P3 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 petitioner.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find from Ext.P3 that the petitioner was afforded an adequate opportunity for filing a reply to the pre-assessment notice, as also for appearing before the 2nd respondent for a personal hearing. The pre-assessment notice dated 25.09.2015 was served on the petitioner on 26.09.2015 and the petitioner sought for an adjournment by a

letter dated 07.10.2015. This request for adjournment was also granted and the petitioner was asked to appear for a personal hearing and to file a reply within a period of ten days from 21.10.2015. It is not in dispute that, in response to the said notice, the petitioner filed a reply dated 29.10.2015 and also appeared for the personal hearing on the same day. It is only thereafter, that Ext.P3 order was passed by the 2nd respondent. Ext.P3 is dated 30.10.2015. Under the circumstances, I am of the view that, there is no jurisdictional error or non compliance with the rules of natural justice, that would vitiate Ext.P3 order, necessitating an interference with the said order in these proceedings under Article 226 of the Constitution of India. The writ petition, in its challenge against the said order, fails and is accordingly, dismissed.

Counsel for the petitioner seeks some time to pursue his alternate remedy before the appellate authority under the Kerala Value Added Tax Act. Taking note of the said submission of counsel for the petitioner, I direct that recovery steps for recovery of amounts confirmed against the petitioner by Ext.P3 order, shall be kept in abeyance for a period of two weeks from the date of receipt of a copy of this judgment, so as to enable the petitioner to approach the appellate authority, under the KVAT Act.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /27.11.15