IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 36022 of 2015 (C)

PETITIONER(S):

M/S.BRAZIL BUILDERS & DEVELOPERS PVT. LTD.,
EETTIKKALAYIL, MARAMON P.O., KOZHENCHERRY,
PATHANAMTHITTA DISTRICT-689 549,
REPRESENTED BY ITS MANAGING DIRECTOR,
SRI.TITUS ABRAHAM.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER (WORK CONTRACT),
   COMMERCIAL TAXES, PATHANAMTHITTA-689 645.

2. INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, PATHANAMTHITTA-689 645.

BY GOVERNMENT PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 36022 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 :TRUE COPY OF THE ONLINE OPTION DT.5-6-2015 SUBMITTED FOR WORKS CONTRACT COMPOUNDING FOR THE YEAR 2015-16 MADE BY PETITIONER FOR PAYMENT OF TAX ON CONTRACT RECEIPT AT COMPOUNDED RATES U/S.8 OF KVAT ACT.

P2 :TRUE COPY OF THE E-RETURN DT.19-6-2015 FOR THE 4TH QUARTER TO 2014-15 SUBMITTED BY PETITIONER, WITH PROOF OF PAYMENT OF TAX AT COMPOUNDED RATES, ON THE CONTRACT RECEIPT.

P3 :TRUE COPY OF THE NOTICE DT.7-8-2015 IN FORM NO.10G ISSUED TO PETITIONER BY R1 PROPOSING TO ESTIMATE CONTRACT RECEIPT FOR NON FILING OF RETURN FOR 1ST QUARTER TO 2015-16 BASED ON EXT.P2 E-RETURN PROPOSED TO LEVY TAX AT COMPOUNDED RATE OF 4%.

P4 :TRUE COPY OF THE ORDER DT.23-9-2015 ISSUED TO PETITIONER BY 1ST RESPONDENT DEMANDING TAX @ 14.50% ON THE TAXABLE TURNOVER ARRIVED FOR 1ST QUARTER TO 2015-16 DEVIATING FROM EXT.P3 PROPOSAL WITHOUT A REVISED NOTICE TO PETITIONER.

P5 :TRUE COPY OF THE E-RETURN DT.28-9-2015 FOR 1ST QUARTER TO 2015-16 SUBMITTED BY PETITIONER WITH PROOF OF PAYMENT OF TAX AT COMPOUNDED RATES ON THE CONTRACT RECEIPTS, ALONG WITH INTEREST AND SETTLEMENT FEE THEREON.

P6 :TRUE COPY OF THE E-RETURN DT.31-10-2015 FOR 2ND QUARTER TO 2015-16 SUBMITTED BY PETITIONER WITH PROOF OF PAYMENT OF TAX AT COMPOUNDED RATES ON THE CONTRACT RECEIPTS.

P7 :TRUE COPY OF THE DEMAND NOTICE DT.NIL IN FORM NO.1, ISSUED TO PETITIONER BY 2ND RESPONDENT PURSUANT TO EXT.P5 ASSESSMENT.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 36022 of 2015

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Dated this the 7th day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 order of assessment passed in relation to the petitioner for the assessment year 2015-16 (April to June). The grievance of the petitioner in the writ petition is essentially, that before passing Ext.P4 order, the 1st respondent did not hear the petitioner. It is stated therefore, that Ext.P4 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 the dispute between the parties is essentially with regard to, whether or not the petitioner had opted for a facility of paying tax on compounded basis under Section 8 of the Kerala Value Added Tax Act. While the petitioner would contend that returns were filed and tax paid on the basis of the application for compounding, that was submitted by him, it is the stand of the respondents that the petitioner had not cured the defects that were pointed out, in his application for payment of tax on compounded basis and, on that ground, the petitioner had lost his opportunity to pay tax on compounded basis. It was, thereafter, that the 1st respondent assessing authority, proceeded to complete the assessment in relation to the petitioner on best-judgment basis, by treating him as a person, who had not applied for payment of tax on compounded basis. On a perusal of Ext.P4 order, it is evident that the petitioner was not heard before passing the said order. There is a confusion with regard to the date on which the petitioner was called for the personal hearing. In Ext.P3 document, there is a reference to a personal hearing on 17.08.2015, whereas in Ext.P4 order, there is reference to yet another date namely 11.09.2015, on which date the petitioner is said to have been afforded a personal hearing. Inasmuch as it is not in dispute that the petitioner was not heard before passing Ext.P4 order, and I do not see any prejudice being caused to the respondents on account of affording the petitioner an opportunity of hearing, I quash Ext.P4 order and direct the 1st respondent to pass fresh orders of assessment in relation to the petitioner for the aforementioned period, after hearing him. 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 21.12.2015. The 1st respondent shall pass fresh orders as directed, within one month thereafter.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /7.12.15