**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. 36074 of 2015 (H)**
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**PETITIONER(S):**
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**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):**
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1. **STATE OF KERALA,**
   **REPRESENTED BY CHIEF SECRETARY,**
   **SECRETARIAT, TRIVANDRUM-1.**

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 GOVT. 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:**

**rs.**

**WP(C).No. 36074 of 2015 (H)**

## APPENDIX

**PETITIONER'S EXHIBITS:-**

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|---|---|
| **EXT.P1:** | **THE TRUE COPY OF THE NOTICE U/S 25(1) OF THE KVAT ACT 2003 FOR THE YEAR 2011-12 DATED 01.10.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.** |
| **EXT.P2:** | **THE TRUE COPY OF THE REPLY DATED 31ST OCTOBER 2015 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT AGAINST THE P1 PRE ASSESSMENT NOTICE.** |
| **EXT.P3:** | **THE TRUE COPY OF THE ASSESSMENT ORDER NO.32110793662/11-12 DATED 30.10.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.** |
| **EXT.P4:** | **THE TRUE COPY O THE ANNUAL RETURN IN FORM 10 FOR THE YEAR 2011-2012 FILED BY THE PETITIONER ALONG WITH FROM 13 AND FORM 13A FOR THE YEAR 2011-2012.** |
| **EXT.P5:** | **THE TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT DATED 7TH DAY OF NOVEMBER.** |
| **EXT.P6:** | **THE TRUE COPY OF THE DEMAND NOTICE DATED 06.11.2015 BASED ON THE P3 ASSESSMENT ORDER FOR THE YEAR 2010-2011 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.** |

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

**//TRUE COPY//**

**P.S. TO JUDGE**

**rs.**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C) No. 36074 of 2015**

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Dated this the 7th day of December 2015

## JUDGMENT

The challenge in the writ petition is against Ext.P3 order of assessment passed in relation to the petitioner, for the assessment year 2011-12, under the Kerala Value Added Tax Act. The grievance of the petitioner in this writ petition is that before passing Ext.P3 order, the petitioner was not afforded an opportunity of being heard. It is the contention of the petitioner therefore that Ext.P3 order is vitiated by a non-compliance with the rules of natural justice.

2. I have heard Smt.Latha K., the learned counsel for the petitioner 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 from Ext.P3 that the petitioner was served with a notice on 05.10.2015, giving him an opportunity of being heard. In response of the said notice, the petitioner filed an adjournment letter seeking 10 days' time to

file a reply, and the same was also granted. The petitioner did not however file the reply within the time granted and hence another notice was served on the petitioner on 21.10.2015, posting the case for hearing within 7 days, as also for the reply of the petitioner. The petitioner appeared before the assessing authority on 31.10.2015 and filed his reply before the assessing authority, on the same day. It is thereafter that Ext.P3 order was passed by the assessing authority. On a perusal Ext.P3, I do not see any jurisdictional error that was occasioned by the 1st respondent assessing authority, that would necessitate an interference with Ext.P3 order, in these proceedings under Article 226 of the Constitution of India. Accordingly, I dismiss the writ petition in its challenge against Ext.P3 assessment order.

Counsel for the petitioner would seek some time to pursue the appellate remedy against Ext.P3 order. 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 assessment order shall be kept in abeyance for a period of three weeks, so as to enable the petitioner to pursue his appellate remedy against Ext.P3 order.

Sd/-
**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

sm/