IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 36331 of 2015 ()

PETITIONER :

M/S. KRISHNA TYRES
CULLEN ROAD, ALAPPUZHA - 688 011
REPRESENTED BY ITS MANAGING PARTNER
MR.B.SATHRUKHNAN REDDIYAR.

BY ADVS.SRI.MOHAMMED RAFIQ
SRI.G.AJAYAGHOSH KUMAR

RESPONDENT(S) :
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1. THE DEPUTY COMMISSIONER (APPEALS)-II
DEPARTMET OF COMMERCIAL TAXES, KERALA
KOLLAM DISTRICT, PIN- 691 002.

2. THE COMMERCIAL TAX OFFICER -I
2ND CIRCLE, ALAPPUZHA DISTRICT, PIN - 688 001.

3. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY, TAXES DEPARTEMENT
GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN - 695 001.

R1 TO R3 BY GOVT. PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 36331 of 2015 ()

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1 - **THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32040654085/2010-11 RELATING TO THE YEAR 2010-11 DT. 29.10.2012 PASSED BY THE 2ND RESPONDENT UNDER SECTION 25(1) OF THE KVAT ACT, 2003.**

EXT. P2 - **THE TRUE COPY OF THE HEARING NOTICE NO. KVATA (ALPY) 1586/12 DT. 17.07.2015 ISUED BY THE 1ST RESPONDENT.**

EXT. P3 - **THE TRUE COPY OF THE ADJOURNMENT LETTER DT. 27.07.2015 SENT BY THE PETITIONER TO THE 1ST RESPONDENT.**

EXT. P4 - **THE TRUE COPY OF THE POSTAL RECEIPT NO. RL 531604861 IN DT. 27.07.2015.**

EXT. P5 - **THE TRUE COPY OF THE POSTAL ACKNOWLEGEMENT CARD, SIGNED ON BEHALF OF TH 1ST RESPONDENT ON 29.07.2015.**

EXT. P6 - **THE TRUE COPY OF THE ORDER IN KAVTA (ALPY) NO. 1586/12 DT. 05.0.2012 PASSED BY THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 36331 of 2015

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Dated this the 1st day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 appellate order passed by the 1st respondent in an appeal preferred by the petitioner against an order of assessment for the assessment year 20010-11, under the Kerala Value Added Tax Act, hereinafter referred to as the "KVAT Act". The grievance of the petitioner in the writ petition against Ext.P6 order is essentially, that the said order was passed without hearing him. It is stated therefore, that the 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 from Ext.P6 order that the said order was passed without hearing the petitioner. The 1st respondent in the said order, states that although the case was posted for hearing on 08.03.2015 and 29.07.2015, and the notices sent to the petitioner were duly acknowledged by the petitioner, the petitioner did not appear before the 1st respondent on the dates fixed for hearing. Counsel for the petitioner would refer to Ext.P4 request for adjournment, which is dated 27.07.2015, and the acknowledgment card received, which would indicate that the said letter was received at the office of the 1st respondent on 29.07.2015, the date fixed for hearing. In Ext.P6 order, the said request for adjournment is not referred to by the 1st respondent. It is apparent therefore, that the 1st respondent was not aware of the request for adjournment preferred by the petitioner, and it is under those circumstances that Ext.P6 order was passed. Taking note of the fact that the said order was passed, without hearing the petitioner and further, that no prejudice will be caused to the respondent by hearing the petitioner before passing an order in the appeal preferred by the petitioner, I quash Ext.P6 order and direct the 1st respondent to pass fresh orders in the appeal preferred by the petitioner against Ext.P1 assessment order, after hearing the petitioner. To enable the 1st respondent to do so, I direct the petitioner to appear before the office of the 1st respondent at 11 AM on 19.12.2015. The 1st respondent shall pass fresh orders, as directed, within a period of one month thereafter.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /1.12.15