

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

WP(C).No. 36641 of 2015 (E)

PETITIONER(S) :

**MARSHAL VARGHESE,
S/O.VARGHESE, AREECAKL HOUSE, NAYATHODE P.O.,
ANGAMALY, ERNAKULAM DISTRICT.**

BY ADV. SRI.JIJO JOSEPH

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF COMMERCIAL TAXES, TRIVANDRUM, PIN- 695 001.**
- 2. THE DEPUTY COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM, PIN- 682 015.**
- 3. THE COMMERCIAL TAX OFFICER,
ANGAMALY, PIN- 683 572.**

BY GOVERNMENT PLEADER SRI.R.RENJITH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: A TRUE COPY OF THE ASSESSMENT ORDER U/S.25(1) FOR
 THE YEAR 2013-14 DATED 31/10/2014 ALONG WITH THE DEMAND
 OF TAX BY THE 3RD RESPONDENT.**
- EXT.P2: A TRUE COPY OF THE APPELLATE ORDER PASSED BY
 THE 2ND RESPONDENT, REMAND BACK TO THE S.T.O TO
 RECONSIDER THE EXT.P1 ORDER.**
- EXT.P3: A TRUE COPY OF THE ASSESSMENT ORDER U/S.25(1) FOR
 THE YEAR 2013-14 DATED 25.08.2015 ALONG WITH THE DEMAND
 OF TAX BY THE 3RD RESPONDENT.**
- EXT.P4: REGISTERED COVER SENDING THE EXT.P3 ORDER BY
 THE 3RD RESPONDENT TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.
.....
W.P.(C).No.36641 of 2015
.....
Dated this the 22nd day of December, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P3 assessment order passed in relation to the petitioner for the assessment year 2013-2014 under the Kerala Value Added Tax Act. The grievance of the petitioner in the writ petition is essentially that, before passing Ext.P3 order, a pre-assessment notice was not served on the petitioner. It is therefore contended that Ext.P3 order is vitiated by a non-compliance of the rules of natural justice.

2. I have heard 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 as also the submissions made across the bar, I note from Ext.P3 order, that a pre-assessment notice was served on the petitioner on 31.07.2015 and was acknowledged by him. The learned Government Pleader on instructions would produce a copy

of the acknowledgment by the petitioner, on a copy of the notice that was served on the petitioner. Taking note of the said fact and finding Ext.P3 order to be not vitiated by any jurisdictional error or non-compliance with the rules of natural justice, I dismiss the writ petition in its challenge against Ext.P3 order and relegate the petitioner to his alternate remedy of filing an appeal against Ext.P3 order in terms of the KVAT Act.

Counsel for the petitioner would submit that the period for filing an appeal against Ext.P3 order is already over and he will file an appeal, together with a delay condonation petition, before the appellate authority if given some time to do so. 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 three weeks so as to enable the petitioner to pursue his appellate remedy against Ext.P3 order.

A.K.JAYASANKARAN NAMBIAR
JUDGE

W.P.(C). No.36641 of 2015