IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 36693 of 2015 (J)

PETITIONER :

SRI. ABDUL NAZAR, AGED 56 YEARS,
S/O. IBRAHIM, PROPRIETOR, BENZ AUTO PARTS,
MM 18/280F & 18/280N, NELLIPPARAMBU, KARUVAMBRAM
MANJERI, MALAPPURAM DISTRICT, PIN:676123.

BY ADVS.SRI.E.P.GOVINDAN
SMT.G.DEEPA
SRI.K.G.SOMANATH

RESPONDENTS :

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1. THE COMMERCIAL TAX OFFICER (II)
COMMERCIAL TAXES MINI CIVIL STATION, MANJERI
MALAPPURAM DISTRICT-676121.

2. THE COMMISSIONER OF COMMERCIAL TAXES
KERALA, PUBLIC BUILDING, VIKAS BHAVAN P.O.,
TRIVANDRUM-695001.

3. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695001.

R1 TO R3 BY GOVERNMENT PLEADER SRI.R. RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 36693 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE REVISED ASSESSMENT ORDER DATED 30.9.2015 ISSUED BY THE FIRST RESPONDENT FOR THE YEARS 2012-13.

EXHIBIT P2: TRUE COPY OF THE REVISED ASSESSMENT ORDER DATED 30.9.2015 ISSUED BY THE FIRST RESPONDENT FOR THE YEARS 2013-14.

EXHIBIT P3: TRUE COPY OF THE REVISED ASSESSMENT ORDER DATED 30.9.2015 ISSUED BY THE FIRST RESPONDENT FOR THE YEARS 2014-15.

EXHIBIT P4: TRUE COPY OF THE REPLY TO THE PRE-ASSESSMENT NOTICE DATED 14.9.2015 FILED BEFORE THE FIRST RESPONDENT FOR THE YEARS 2012-13.

EXHIBIT P5: TRUE COPY OF THE REPLY TO THE PRE-ASSESSMENT NOTICE DATED 14.9.2015 FILED BEFORE THE FIRST RESPONDENT FOR THE YEARS 2013-14.

EXHIBIT P6: TRUE COPY OF THE REPLY TO THE PRE-ASSESSMENT NOTICE DATED 14.9.2015 FILED BEFORE THE FIRST RESPONDENT FOR THE YEARS 2014-15.

EXHIBIT P7: TRUE COPY OF THE ADJOURNMENT LETTER DATED 14.7.2015 FILED BY THE PETITIONER.

EXHIBIT P8: TRUE COPY OF THE ADJOURNMENT LETTER DATED 20.8.2015 FILED BY THE PETITIONER.

EXHIBIT P9: TRUE COPY OF THE LETTER DATED 20.8.2015 GRANTING TIME BY THE FIRST RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 36693 of 2015

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Dated this the 18th day of December 2015

JUDGMENT

The challenge in the writ petition is against Exts. P1, P2 and P3 revised assessment orders, passed by the 1st respondent assessing authority, under the KVAT Act, for the assessment years 2012-13, 2013-14 and 2014-15. The grievance of the petitioner in the writ petition is essentially that, before passing the said orders, the request of the petitioner for cross examination of certain dealers, from whom the petitioner was alleged to have made un-accounted purchases, was not permitted by the adjudicating authority. The contention of the petitioner therefore is that the orders impugned are vitiated by a non-compliance with the rules of natural justice.

2. I have heard the Sri.Govindan E.P., 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, and on a perusal of

Exts.P1, P2 and P3 orders that are impugned in the writ petition, I find that, although there was a specific request from the petitioner to permit the petitioner to cross-examine those dealers from whom he was alleged to have purchased materials, and which purchases had not been accounted by him in his books of account, the adjudicating officer blandly states that it is up to the petitioner to produce material to rebut the allegations made against him with regard to un-accounted purchases. In my view, the said stand of the assessing officer cannot be legally countenanced. It is trite that when the department seeks to rely on material, that has not been put to the petitioner previously, then an opportunity must necessarily be given to the petitioner to counter the same, before placing reliance on the said material. In the instant case, the request of the petitioner for cross-examination of the dealers, whose alleged sales to the petitioner was relied on by the respondents, had necessarily to be acceded to before completing the adjudication process in relation to the petitioner. Inasmuch as the opportunity to cross-examine was not afforded to the petitioner, I find that Exts.P1, P2 and P3 orders passed by the assessing authority are vitiated by a non-compliance with the rule of natural justice. Accordingly, I quash Exts.P1, P2 and P3 orders and direct the 1st respondent to complete the assessments in relation to the petitioner for the assessment years 2012-13, 2013-14 and 2014-

15 afresh, after affording the petitioner an opportunity to cross-examine the dealers, from whom the petitioner is alleged to have made un-accounted purchases. The 1st respondent shall thereafter afford the petitioner an opportunity of hearing and then pass fresh orders of assessment, as directed in this judgment. To enable the 1st respondent to pass fresh orders, I direct the petitioner to appear before the 1st respondent at his office at 11 a.m. on 04.01.2016, so as to initiate the process of cross-examination of the persons sought for by the petitioner.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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