IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 37090 of 2015 (I)

PETITIONER :

RASILA S. JAIN, PROPRIETRESS,
M.P.AGENCIES, XL/8572-A & XL/8572-A1,
1ST FLOOR, CHANDRAKALA BUILDING, T.D.ROAD,
ERNAKULAM, PIN-682 035.

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENT(S):
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1. **THE ASSISTANT COMMISSIONER,**
   SPECIAL CIRCLE-1, DEPARTMENT OF COMMERCIAL TAXES,
   ERNAKULAM, PIN-682 015.

2. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   MINISTRY FOR FINANCE, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM, PIN-695 004.

BY GOVERNMENT PLEADER SMT. LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.37090/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ANNUAL RETURN FILED BY THE PETITIONER FOR THE YEAR 2013-14, DATED 30/05/2014.

P2 COPY OF THE AUDIT REPORT IN FORM NO.13 & 13A AND THE ANNUAL FINANCIAL STATEMENTS FILED BY THE PETITIONER DATED 29/12/2014.

P3 COPY OF THE PRE-ASSESSMENT NOTICE ISSUED BY THE 1ST RESPONDENT DATED 25/09/2015

P4 COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 19/10/2015.

P5 COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT UNDER SEC.25(1) DATED 20/11/2015.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.37090 of 2015

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Dated this the 8th day of December, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 order of assessment under the Central Sales Tax Act in relation to the petitioner for the assessment year 2013-2014. The grievance of the petitioner in the writ petition is essentially that, although he had effected interstate purchase of medicine for a turnover of Rs.67,77,506/-, he had discharged the tax liability in respect of the said medicine at the time of sale within the State, and this fact was intimated to the department along with the returns filed by him. It is notwithstanding this, that the petitioner has been served with a notice proposing the finalisation of assessment by including the tax in respect of interstate purchase of medicine again, and Ext.P5 order has been passed without considering the fact that the petitioner has already paid the tax in respect of the interstate purchase of medicine. The petitioner contends that Ext.P5 order is vitiated by a patent non-application of mind, apart from a violation of the principles of natural justice.

2. I have heard the learned counsel for the petitioner and also 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 that, in response to the notice issued to him, the petitioner had by Ext.P4 reply clearly indicated that he had collected tax on the MRP value of interstate purchase and that the amount had been remitted along with the monthly returns. It was his specific case that there was no evasion of tax committed by him. In Ext.P5 order, there is no reference to the contentions in the reply, and further, the petitioner was also not afforded a personal hearing before Ext.P5 order was passed. Under the said circumstances, I am of the view that, Edxt.P5 order cannot be legally sustained inasmuch as it does not reflect an application of mind by the 1st respondent, and further, the said order was passed without hearing the petitioner which renders it illegal on account of a non-compliance with the rules of natural justice. I, therefore, quash Ext.P5 order and direct the 1st respondent to pass fresh orders of assessment in relation to the petitioner for the assessment year 2013-2014 after hearing the petitioner. To enable the 1st respondent to do so, I direct the petitioner to appear before the 1st respondent at his office at 11 a.m on 16.12.2015. The 1st respondent shall pass orders as directed within a month thereafter.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/08.12.15