IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 37329 of 2015 (M)
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PETITIONER(S):

M.K.SHAMSUDHEEN,
PROPRIETOR, M.S.POURNAMI PALACE,
BRAHMAKULAM, THAIKAD, CHAVAKAD,
THRISSUR DISTRICT, S/O.MUHAMMEDKUTTY,
AGED 66 YEARS, KURIKKAKATH HOUSE,
P.O. THAIKAD, THRISSUR DISTRICT,
PIN - 680 104.

BY ADVS.DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER - (LUXURY TAX),**
LUXURY TAX, THRISSUR - 680 001.

2. **THE DEPUTY COMMISSIONER (APPEALS),**
DEPARTMENT OF COMMERCIAL TAXES,
4TH FLOOR, SALES TAX COMPLEX,
PERUMANNOOR, ERNAKULAM - 682 15.

3. **THE INSPECTING ASSISTANT COMMISSIONER (RECOVERY),**
DEPARTMENT OF COMMERCIAL TAXES, THRISSUR - 680 001.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 37329 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: A TRUE COPY OF THE JUDGMENT DTD.29.9.2014 IN WP(C) NO.9634/2009 PASSED BY THE HON'BLE HIGH COURT OF KERALA.

EXT.P2: A TRUE COPY OF THE ASSESSMENT ORDER DTD.24.3.2014 FOR THE YEAR 2006-07 ALONG WITH DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT.

EXT.P2(a): A TRUE COPY OF THE ASSESSMENT ORDER DTD.24.3.2014 FOR THE YEAR 2007-08 ALONG WITH DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT.

EXT.P2(b): A TRUE COPY OF THE ASSESSMENT ORDER DTD.24.3.2014 FOR THE YEAR 2008-09 ALONG WITH DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT.

EXT.P3: TRUE COPY OF THE APPEAL PETITION DTD.29.4.2014 PREFERRED BY THE PETITIONER BEFORE THE 2ND RESPONDENT AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2006-07.

EXT.P3(a): TRUE COPY OF THE APPEAL PETITION DTD.29.4.2014 PREFERRED BY THE PETITIONER BEFORE THE 2ND RESPONDENT AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2007-08.

EXT.P3(b): TRUE COPY OF THE APPEAL PETITION DTD.29.4.2014 PREFERRED BY THE PETITIONER BEFORE THE 2ND RESPONDENT AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2008-09.

EXT.P4: A TRUE COPY OF THE STAY ORDER DTD.7.5.2014 PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2006-07.

EXT.P4(a): A TRUE COPY OF THE STAY ORDER DTD.7.5.2014 PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2007-08.

EXT.P4(b): A TRUE COPY OF THE STAY ORDER DTD.7.5.2014 PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2008-09.

EXT.P5: A TRUE COPY OF THE CHALAN EVIDENCING REMITTANCE MADE BY THE PETITIONER FOR THE YEAR 2006-07.

EXT.P5(a): A TRUE COPY OF THE CHALAN EVIDENCING REMITTANCE MADE BY THE PETITIONER FOR THE YEAR 2007-08.

EXT.P5(b): A TRUE COPY OF THE CHALAN EVIDENCING REMITTANCE MADE BY THE PETITIONER FOR THE YEAR 2008-09.

EXT.P6: A TRUE COPY OF THE BANK GUARANTEE DTD.9.6.2014 FURNISHED BY THE PETITIONER.

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EXT.P7: ATRUE COPY OF THE POSTING NOTICE DTD.16.2.2015 ISSUED BY THE 2ND RESPONDENT POSTING THE THREE CASES TO 24.2.2015.

EXT.P8: ATRUE COPY OF THE ADJOURNMENT APPLICATION DTD. 24.2.2015 SENT BY THE PETITIONER TO THE 2ND RESPONDENT BY REGISTERING POST ALONG WITH POSTAL RECEIPT.

EXT.P9: ATRUE COPY OF THE APPELLATE ORDER DTD.14.10.2015 FOR THE YEAR 2006-07 PASSED BY THE 2ND RESPONDENT.

EXT.P9(a): A TRUE COPY OF THE APPELLATE ORDER DTD.14.10.2015 FOR THE YEAR 2007-08 PASSED BY THE 2ND RESPONDENT.

EXT.P9(b): A TRUE COPY OF THE APPELLATE ORDER DTD.14.10.2015 FOR THE YEAR 2008-09 PASSED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 37329 of 2015

Dated this the 9th day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P9 series of appellate orders passed by the 2nd respondent in appeals preferred against the petitioner against orders passed by the assessing authority under the Kerala Tax on Luxuries Act. The grievance of the petitioner in the writ petition is essentially that Ext.P9 series of appellate orders were passed by the 2nd respondent without affording the petitioner an opportunity of being heard. It is the contention therefore, that the said orders are vitiated by a non-compliance with the rules of natural justice.

2. I have heard the learned Senior Counsel on behalf of the petitioner as also the learned Government Pleader on behalf of 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.P9 series of orders that, there were several opportunities granted to the petitioner for appearing before the appellate authority. A notice dated 30.09.2014 was issued to the petitioner posting the hearing of the appeal on 10.10.2014. The petitioner did not appear or file any adjournment application on that occasion. Thereafter, on 04.11.2014, another posting notice was sent to the petitioner, posting the case for hearing on 30.11.2014. In response to the said notice, the petitioner filed an adjournment application requesting a period of two months as also requesting that the case be posted to the 1st week of February, 2015. Thereafter, a 3rd notice dated 16.02.2015 was issued, posting the case on 24.02.2015. In response to the said notice, the petitioner preferred an adjournment application, which is produced as Ext.P8 in the writ petition. It appears that, despite receipt of Ext.P8 adjournment application, the 2nd respondent did not grant the adjournment and proceeded to pass Ext.P9 series of orders, in the appeals preferred by the petitioner. While in normal circumstances, this would not be a case, which would warrant the interference by this Court in proceedings under Article 226 of the Constitution of India, taking note of the number of opportunities that was granted to the petitioner assessee to represent his case before the appellate authority, I find from the instant case that, while the petitioner had preferred an application for adjournment on 24.02.2015, and the said application was received in the Office of the 2nd respondent on the same day, the 2nd respondent proceeded to pass Ext.P9 series of orders only eight months thereafter. Taking note of this time lag between the date of receipt of the adjournment application and the date of passing of Ext.P9 series of orders, I am of the view that no prejudice would have been caused to respondents had the request of adjournment being considered favourably. Under the said circumstances, I am of the view that the petitioner ought to be given an opportunity of hearing before the 2nd respondent. I therefore, quash Ext.P9 series of orders and direct the petitioner to appear before the 2nd respondent at his Office at 11 AM on 22.12.2015. The 2nd respondent shall, after hearing the petitioner, proceed to pass orders in the appeals, within a period of one month thereafter.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /9.12.15