

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 37984 of 2015 (W)

PETITIONER(S):

**M/S. KOMBAN ELECTRONICS & HOME APPLIANCES,
VI/776, NATTIKA GRAMA PANCHAYATH, TRIPRAYAR,
REPRESENTED BY ITS PROPRIETOR SOFAN PAUL.**

**BY ADVS.SRI.A.KUMAR,
SRI.P.J.ANILKUMAR,
SMT.G.MINI,
SRI.P.S.SREE PRASAD,
SRI.JACOB JOHN (TRIVANDRUM).**

RESPONDENT(S):

**THE DEPUTY COMMISSIONER,
OFFICE OF THE DY. COMMISSIONER,
COMMERCIAL TAXES, POOTHOLE,
THRISSUR-4.**

BY GOVT. PLEADER SMT.LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 37984 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

**EXHIBIT-P1: TRUE COPY OF NOTICE ISSUED BY THE INTELLIGENCE OFFICER,
SQUAD IV, THRISSUR UNDER SEC 70 OF THE KVAT ACT
DATED 30/09/2015.**

EXHIBIT-P2: TRUE COPY OF THE REPLY DATED 26/10/2015.

EXHIBIT-P2(A): TRUE COPY OF THE REPLY DATED 26/10/2015 SEEKING TIME.

EXHIBIT-P3: TRUE COPY OF THE NOTICE DATED 04/11/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.
.....
W.P.(C).No.37984 of 2015
.....
Dated this the 16th day of December, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P3 notice issued to the petitioner under Section 18 of the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT ACT') read with Rule 20 of the Kerala Value Added Tax Rules proposing a suspension of his registration as a dealer for three months. The grievance of the petitioner in the writ petition is essentially that in Ext.P3, the respondent has already made up his mind with regard to the guilt of the petitioner and responding to the said notice would be a futile exercise since the respondent has already decided on a course of action against the petitioner. The petitioner relies on the decision of the Supreme Court in **Oryx Fisheries Private Limited v Union of India and Ors - [(2010) 13 SCC 427]**.

2. I have heard the learned counsel for the petitioner and also the learned Government Pleader for the respondent.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find from Ext.P3 notice issued to the petitioner that the notice confronts the petitioner with specific findings of guilt, and therefore, cannot be seen as a show cause notice that would serve the purpose of a adjudication at the instance of the respondents. It is relevant in this context to note the observations in the Supreme Court in **Oryx Fisheries Private Limited v Union of India and Ors – [(2010) 13 SCC 427]**, the Supreme Court found that a show cause notice that was served on the appellant in that case was one that confronted him with definite conclusions of his alleged guilt and observed as follows:

“27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of the quasi-judicial proceeding also. If the functioning of a quasi-judicial

authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

29.

30.

31. *It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.*

32. *Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.*

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."

Inasmuch as Ext.P3 notice evidences the formation of an opinion by the respondent, the said notice cannot be legally sustained. Accordingly, I quash Ext.P3 notice and allow this writ petition.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

W.P.(C). No.37984 of 2015