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. 38086 of 2015 (I)

PETITIONER(S):

SR.XAVIER P.D., AGED 49 YEARS,
PROPRIETOR OF M/S.XAVIER TRADERS, BIG BAZAR,
KOZHIKODE 673 004.

BY ADV. SRI.N.K.SANATH KUMAR

RESPONDENT(S):

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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY,
   DEPT.OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM -695 001.

2. ASST. COMMISSIONER-2 (ASSESSMENT),
   SPECIAL CIRCLE 1, COMMERCIAL TAXES,
   KOZHIKODE 673006.

BY GOVERNMENT 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:

PJ

WP(C).No. 38086 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE COPY OF DEFECT NOTICE DATED 10.9.2015

P2 - TRUE COPY OF REPLY DATED 10.9.2015

P3 - TRUE COPY OF PRE ASSESSMENT NOTICE DT.12.10.2015

P4 - TRUE COPY OF REPLY DT. 5.11.2015

P5 - TRUE COPY OF ORDER NO.C3/17563/09/CT DT.22.1.2010

P6 - TRUE COPY OF ASSESSMENT ORDER DT. 30.11.2015

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 38086 of 2015
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Dated this the 16th day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 order of assessment passed in relation to the petitioner for the assessment year 2013-14 under the Kerala Value Added Tax Act. The grievance of the petitioner in the writ petition is essentially that, prior to passing Ext.P6 order, he was not afforded a personal hearing.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that prior to passing Ext.P6 order, the petitioner was served with a notice proposing the completion of an assessment on best judgment basis. He was also afforded an opportunity of appearing before the assessing authority with the books of accounts and connected records. Another opportunity was given to him for filing objections to the proposal for best judgment assessment and for personal hearing. It is not in dispute that pursuant to the 2nd opportunity granted, the petitioner filed a reply before the assessing authority on 05.11.2015. In the said reply, however, there was no request for a further opportunity for personal hearing. The 2nd respondent assessing authority therefore, proceeded to consider the reply filed by the petitioner and passed Ext.P6 order of assessment. On a perusal of Ext.P6 order, I do not find the same to be vitiated by any jurisdictional error or a non compliance with the rules of natural justice. Accordingly, the writ petition in its challenge against Ext.P6 order fails and is accordingly, dismissed. The petitioner is relegated to his alternate remedy of preferring an appeal against Ext.P6 order before the appellate authority under the KVAT Act.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /16.12.15