

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 29TH DAY OF AUGUST 2014/7TH BHADRA, 1936

WP(C).No. 22030 of 2014 (C)

PETITIONER(S)/PETITIONER :

**RAJESH EXPORTS LTD.,
SDF 17, 4TH FLOOR, CSEZ
KAKKANAD, COCHIN, REGISTERED OFFICE
BATAVIA CHAMBERS, KUMARA KRUPA ROAD, BANGALORE-560 001.
REP BY ITS MANAGING DIRECTOR, PRASHANT MEHTA**

**BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMT.G.MINI(1748)
SRI.P.S.SREE PRASAD**

RESPONDENT(S)/RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY TAX SECRETARY, MINISTRY OF FINANCE,
TRIVANDRUM-695 001.**
- 2. THE COMMISSIONER OF COMMERCIAL TAXES,
TAXES TOWERS, KARAMANA, TRIVANDRUM-695 002.**
- 3. ASSISTANT COMMISSIONER
SPECIAL CIRCLE III, DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM-682 018**

R1-R3 BY SMT.SHOBA ANNAMMA EAPEN, SR.GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29-08-2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Contd...2/-

AMV

WP(C).No. 22030 of 2014 (C)

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1:- COPY OF THE SAID CIRCULAR ISSUED ON 25/4/2013**
- P2:- COPY OF THE RETURN FOR THE MONTH OF APRIL DTD 29/5/2013**
- P2(A):- COPY OF THE RETURN FOR THE MONTH OF MAY DTD 23/7/2013**
- P2(B):- COPY OF THE RETURN FOR THE MONTH OF JUNE DTD 23/7/2013**
- P2(C):- COPY OF THE RETURN FOR THE MONTH OF JULY DTD 28/8/2013**
- P3:- COPY OF THE ASSESSMENT ORDER DTD 16/7/2013**
- P4:- COPY OF THE ORDER DTD 17/8/2013**
- P5:- COPY OF THE REPRESENTATION DTD 25/10/2013 BEFORE THE TAXES SECRETARY**
- P6:- COPY OF THE PETITION FILED BEFORE THE COMMISSIONER OF COMMERCIAL TAXES DTD 15/11/2013.**
- P7:- COPY OF THE ADDITIONAL REPRESENTATION MADE ON 30/10/2013 BEFORE THE COMMISSIONER OF COMMERCIAL TAXES**
- P8:- COPY OF THE ADDITIONAL REPRESENTATION MADE ON 10/12/2013 BEFORE THE COMMISSIONER OF COMMERCIAL TAXES.**
- P9:- COPY OF THE ORDER DTD 14/12/2013 PASSED BY THE COMMISSIONER OF COMMERCIAL TAXES**
- P10:- COPY OF THE REPRESENTATION MADE BY THE PETITIONER BEFORE THE COMMISSIONER OF COMMERCIAL TAXES DTD 24.12.2013.**
- P11:- COPY OF THE REPRESENTATION MADE BY THE PETITIONER BEFORE THE COMMISSIONER OF COMMERCIAL TAXES, DTD 11/1/2014**
- P12:- COPY OF THE ORDER PASSED BY THE COMMISSIONER OF COMMERCIAL TAXES DTD 11/4/2014**
- P13:- COPY OF THE COMMUNICATION OF THE TAXES SECRETARY, DTD 20/5/2014**
- P14:- COPY OF THE NOTICE DTD 21/8/2013**

Contd...3/-

AMV

WP(C).No. 22030 of 2014 (C)

RESPONDENT(S)' EXHIBITS :

ANNEXURE-R3A	COPY OF THE LETTER FROM THE DEPUTY DIRECTOR DRI, COCHIN REGIONAL UNIT.
ANNEXURE-R3B	COPY OF THIS ENQUIRY REPORT DATED 23.05.2013.
ANNEXURE-R3C	COPY OF THE NOTICE 06.06.2013.
ANNEXURE-R3D	COPY OF THE ENDORSEMENT OF POSTAL DEPARTMENT DATED 12.06.2013.
ANNEXURE-R3E	COPY OF THE ACKNOWLEDGMENT DATED 13.06.2013.
ANNEXURE-R3F	COPY OF THE ADJOURNMENT NOTICE DATED 08.07.2013.
ANNEXURE-R3G	COPY OF THE RETURN FILED BY THE PETITIONER SHOWING THE E-MAIL ADDRESS.
ANNEXURE-R3H	COPY OF THE E-MAIL.
ANNEXURE-R3I	COPY OF THE POSTAL ACKNOWLEDGMENT RECEIPT DATED 30.07.2013.
ANNEXURE-R3J	COPY OF THE NOTICE DATED 20.07.2013.
ANNEXURE-R3K	COPY OF THE E-MAIL DATED 26.07.2013.

/TRUE COPY/

PA.TO JUDGE

AMV

K.VINOD CHANDRAN, J.

W.P.(C) No. 22030 of 2014 (C)

Dated this the 29th day of August, 2014

JUDGMENT

The petitioner is aggrieved with the assessments passed under Sections 22 and 25 of the Kerala Value Added Tax Act, 2003 produced as Exts. P3 and P4.

2.The short contention raised by the petitioner is the violation of principles of natural justice, that too, at this point, confined to Ext.P3 order. Ext.P3 order is an order passed under Section 22 of the KVAT Act. Suffice it to notice that the petitioner is conducting an export oriented business. in the Special Economic Zone (for short, 'SEZ'). An employee of the petitioner was found with gold outside the SEZ and the same was seized by the Directorate of Revenue Intelligence. The seizure and further proceedings initiated thereon are not relevant. The sales tax department was intimated of the same and notice was initiated under the Kerala Value Added Tax Act, 2003, on such intimation and after

alleged inspection. The facts were noticed only to put the matter in a correct perspective.

3.The contention raised in the above writ petition is with respect to the insufficiency of notice issued. It is evident that the notice was first issued, fixing the hearing date at 11 a.m. on 13.07.2013. The petitioner was also directed to file objections within seven days of receipt of the notice. Subsequently, a revised notice is said to have been issued on 08.07.2013 re-fixing the date for personal hearing to 15.07.2013. However with respect to the service of notice; the assessment order speaks only of the service of the first notice fixing the date on 13.06.2013 that too on the petitioner's Corporate Office at Bangalore.

4.The learned Special Government Pleader (Taxes) has filed a statement in the above case, wherein it is indicated that the revised notice was served by e-mail and was also attempted to be served in the Cochin

office.

5.The petitioner's contention is that the notice first issued, fixing the date of personal hearing on 13.07.2013 was revised only on account of the 13th being a holiday. The service of such notice at the Cochin office, within the SEZ, failed for the reason that the petitioner had closed down that establishment. It was hence that notice was issued on the Corporate Office at Bangalore. Hence there is no substance in the assertion of the department that the revised notice was served at the Cochin office. Proper service could have been effected only at the petitioner's Corporate Office at Bangalore. The statement that notice was served by e-mail also cannot be sustained since there could be no acknowledgement of receipt of such notice. This Court has also held in a number of cases that service by e-mail though available in the statute cannot be the sole mode of service, since there is absolutely no method by which the actual service could be substantiated. The proceedings so

taken would go against the principles of natural justice, which, by the prescription of a hearing contemplates a reasonable opportunity and an effective hearing being conducted by the authorities under the statute.

6.The learned counsel appearing for the petitioner as also the learned Special Government Pleader (Taxes) have conflicting contentions with respect to the service of notice at Ext.P4. However that need not be considered at this point since Ext.P4 is an assessment under Section 25 of the KVAT Act, which is dependent upon the assessment completed under Section 22. Hence sustainability of Ext.P4 would depend upon the sustainability of Ext.P3.

7.The aforesaid discussion reveal that Ext.P3 was passed without an effective opportunity being granted to the petitioner. The same has to be set aside only on the ground of violation of principles of natural justice, as noticed above. It is made clear that this Court has not

gone into the merit of the assessment made. In any event Ext.P3 having been set aside, Ext.P4 also cannot be allowed to stand. The petitioner shall appear before the third respondent at 11 a.m. on 23.09.2014 and the third respondent shall intimate a date of hearing to the petitioner, with due acknowledgment, for which no separate notice is required and the assessment shall be completed, at any rate, within a period of 'two months' from the date of appearance of the petitioner. Exts.P3 and P4 hence would stand set aside leaving liberty to the State to proceed against the petitioner in accordance with law; under the statute.

The writ petition is allowed with the above directions.

Sd/-
K.VINOD CHANDRAN,
JUDGE

AMV/03/09/