IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

FRIDAY, THE 30TH DAY OF AUGUST 2019 / 8TH BHADRA, 1941

WP(C).No.11416 OF 2019(B)

PETITIONER:

      M/S.TATA COMMUNICATIONS LIMITED
      VIDESH SANCHAR BHAVAN, KAKKANAD, COCHIN-682030,
      REPRESENTED BY ITS MANAGER (FINANCE)
      MR.K.PARANTHAMAN.

      BY ADV. SMT.K.LATHA

RESPONDENTS:

    1   STATE OF KERALA,
        REPRESENTED BY CHIEF SECRETARY TO THE GOVERNMENT OF
        KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695002.

    2   THE STATE TAX OFFICER,
        IIND CIRCLE, KALAMASSERY AT CIVIL STATION, KAKKANAD,
        COCHIN-682030.

    3   THE JOINT COMMISSIONER,
        OFFICE OF THE COMMISSIONER, SGST, TAX TOWER,
        THIRUVANANTHAPURAM-695002.

    4   THE DEPUTY COMMISSIONER,
        COMMERCIAL TAXES, ERNAKULAM-682019.

        R2 BY GOVERNMENT PLEADER

OTHER PRESENT:

      GP. SMT. M.M. JASMIN

   THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30.08.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of August 2019

The petitioner challenges the legality of Exts.P4 and P7 in the instant writ petition. The writ prayer reads as follows:

(i)   To issue a writ of certiorari quashing Ext.P4 return revising rejection order and Ext.P7 order in File No.CT/14325/2018-CT dated 22.12.2018.

(ii) To issue a writ of mandamus of direction to the respondents to allow the petitioner to revise the returns for the assessment years 2014-2015 to 2016-2017 accordingly as requested in the P1 request letter.

(iii) To issue a writ of mandamus or direction to the second respondent to admit the true fact that the petitioner operates under telecom sector which is a capital intensive industry and requires huge investments for augmenting their network capacity and hence the materials are consumed by the petitioner for augmenting network capacity, thereby withdraw the proceeding based on the Ext.P8 series of pre-assessment notices for the assessment years 2014-2015 to 2016-17.

(iv) To grant such other and further relief which this Court may deem fit and proper in the circumstances of the case and to allow this writ petition."

2.   Heard Adv.Latha K., learned counsel for petitioner and Dr.Thushara James, learned Government Pleader.

3. The operative portion of Ext.P4 order reads as follows:

"ORDER No.32071357664/2011-12, 2014-15, 2015-16 & 2016-17/ dated 30.6.2018

The application dated 24.1.2018 filed on 31.5.2018 by Tata communications Ltd., bearing TIN32071357664 to revise the returns for the years 2011-12, 2014-15, 2015-16 & 2016-17 is hereby rejected for the reasons stated above."

4. By just opposing the conclusion recorded in Ext.P4, Adv.K.Latha invited the attention of this Court to the request of petitioner filed for revising the return for the assessment years 2014-2015 to 2016-2017. The submission of the learned counsel is that none of the objections stated by the petitioner has been considered and the order is too precise to raise any other ground against the rejection. Therefore, she prays for setting aside Ext.P4 read with Ext.P7 and to remand the matter to the 2nd respondent for fresh disposal. She refers to and relies upon judgment of this Court dated 21.6.2019 in WPC No.11811 of 2019. This Court, in similar circumstances, taking note of the obligation to give reasons for taking a decision on the request for revision of return, directed re-consideration.

5. The learned Government Pleader contends that Ext.P4 read with Ext.P7 will have to be read with its entirety if these two documents are read in that fashion. It can be appreciated that the requests are fairly adverted to and the assessing officer, since is not in agreement with any of the objections raised by the petitioner/assessee,

passed the order impugned in Ext.P4. The objection of Government Pleader is taken note of and the record is carefully perused.

6. After perusing the record, this Court is of the view that objective consideration of request of petitioner would have satisfied the first requirement of fairness in procedure and consideration while passing the order impugned in the writ petition.

7. For the reasons recorded in judgment in WPC No.11811 of 2019, I am satisfied the order in Ext.P4 read with Ext.P7 could be set aside. Accordingly, the order is set aside and restored to file for reconsideration by the second respondent.

8. The petitioner appears on 17.9.2019 at 11 a.m. accompanied by a copy of this judgment before the second respondent. The second respondent examines the request of the petitioner for revision made through Ext.P9, considers all the points stated in this behalf and passes an order. The entire exercise is completed on or before 10.10.2019.

Sd/-

S.V.BHATTI

JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	THE TRUE COPY OF THE REQUEST DATED 23RD MARCH 2018 FOR REVISING THE RETURN FOR THE ASSESSMENT YEARS 2014-2015 TO 2016-2017.
EXHIBIT P2	THE TRUE COPY OF THE JUDGMENT IN WRIT PETITION WPC.NO.13489 OF 2018 DATED 13TH DAY OF APRIL 2018.
EXHIBIT P3	THE TRUE COPY OF THE CIRCULAR NO.14 OF 2017.
EXHIBIT P4	THE TRUE COPY OF THE ORDER NO.32071357664/2011-12, 2014-15, 2015-206 AND 2016-17 DATED 30.6.2018 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
EXHIBIT P5	THE TRUE COPY OF THE LETTER DATED 4TH JULY 2018 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
EXHIBIT P6	THE TRUE COPY OF THE LETTER DATED 9TH NOVEMBER 2018, FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
EXHIBIT P7	THE TRUE COPY OF THE ORDER IN FILE NO.CT/14325/2018-CT DATED 22.12.2018 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.
EXHIBIT P8	THE TRUE COPY OF THE PRE ASSESSMENT NOTICES U/S.25(1) OF KVAT ACT, 2003 FOR THE YEAR 2014-2015 DATED 25.10.2018.
EXHIBIT P8 A	THE TRUE COPY OF THE PRE ASSESSMENT NOTICES U/S 25(1) OF KVAT ACT, 2003 FOR THE YEAR 2015-16 DATED 25.10.2018.
EXHIBIT P8 B	THE TRUE COPY OF THE PRE ASSESSMENT NOTICES U/S 25(1) OF KVAT ACT, 2003 FOR THE YEAR 2016-17 DATED 25.10.2018.
EXHIBIT P9	THE TRUE COPY OF THE REVISION REQUEST LETTER DATED 11TH JANUARY 2019, FILED BY THE PETITIONER BEFORE THE FOURTH RESPONDENT.