IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 18TH DAY OF JANUARY 2017/28TH POUSHA 1938

WP(C).No. 40735 of 2016 (N)

PETITIONER(S):

M/S. PAZHASSI RAJA UNIVERSAL PULIC SCHOOL, KANNANKODE, ERAMANGALAM.P.O., BALUSSERY, KOZHIKODE, REPRESENTED BY ITS CHAIRMAN.

BY ADV. SRI.R.RAMADAS

RESPONDENT(S):

---

1. **THE COMMISSIONER OF COMMERCIAL TAXES THIRUVANANTHAPURAM, PIN-695 001.**

2. **THE DEPUTY COMMISSIONER, DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE, PIN-673 001.**

3. **THE INTELLIGENCE OFFICER-1, OFFICE OF THE DEPUTY COMMISSIONER (INT), COMMERCIAL TAXES, KOZHIKODE, PIN-673 001.**

BY GOVERNMENT PLEADER SRI.V.K.SHAMSUDHEEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-01-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 40735 of 2016 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1:	**TRUE COPY OF THE BUILDING PERMIT DATED 13-01-2012 ISSUED BY THE BALUSSERY GRAMA PANCHAYATH TO THE PETITIONER.**
EXHIBIT P2:	**TRUE COPY OF ORDER DATED 30-08-2016 PASSED BY THE 2ND RESPONDENT IN RESPECT OF THE ASSESSMENT YEAR 2009-10**
EXHIBIT P2A:	**TRUE COPY OF ORDER DATED 30-08-2016 PASSED BY THE 2ND RESPONDENT IN RESPECT OF THE ASSESSMENT YEAR 2010-11**
EXHIBIT P2B:	**TRUE COPY OF ORDER DATED 30-08-2016 PASSED BY THE 2ND RESPONDENT IN RESPECT OF THE ASSESSMENT YEAR 2011-12**
EXHIBIT P2C:	**TRUE COPY OF ORDER DATED 30-08-2016 PASSED BY THE 2ND RESPONDENT IN RESPECT OF THE ASSESSMENT YEAR 2012-13**
EXHIBIT P2D:	**TRUE COPY OF ORDER DATED 30-08-2016 PASSED BY THE 2ND RESPONDENT IN RESPECT OF THE ASSESSMENT YEAR 2013-14**
EXHIBIT P3:	**COPY OF THE FORM NO.22 SUMMONS TO THE PETITIONER ISSUED BY THE R3.**
EXHIBIT P4:	**COPY OF THE NOTICE DT 14/11/2016 FROM THE R3 RECEIVED BY THE PETITIONER ON 21/1/2016.**
EXHIBIT P5:	**COPY OF THE OBJECTION DT 21/11/2016 BEFORE THE R3 BY THE PETITIONER.**
EXHIBIT P6:	**COPY OF THE ORDER DT 23/11/2016 ISSUED BY THE R3 IN RESPECT OF THE PERIOD 2009-10.**
EXHIBIT P6(a):	**COPY OF THE ORDER DT 23/11/2016 ISSUED BY THE R3 IN RESPONDENT IN RESPECT OF THE PERIOD 2010-11.**
EXHIBIT P6(b):	**COPY OF THE ORDE DT 23/11/20165 ISSUED BY THE R3 IN RESPECT OF THE PERIOD 2011-12.**

WP(C).No. 40735 of 2016 (N)

EXHIBIT P6(c): COPY OF THE ODER DT 23/11/2016 ISSUED BY THE R3 IN RESPECT OF THE PERIOD 2012-13.

EXHIBIT P6(d): COPY OF THE ORDER DT 23/11/2016 ISSUED BY THE R3 IN RESPECT OF THE PERIOD 2013-14.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. VINOD CHANDRAN, J.

W.P.(C) No. 40735 of 2016 (N)

Dated: 18th January, 2017

<u>J U D G M E N T</u>

The petitioner is aggrieved with Ext.P6 series of orders of penalty; relating to the assessment years 2009-2010 to 2013-2014. The petitioner is not an assessee or a registered dealer and was the awarder of a work for construction of a school building. The proceeding under Section 67 of the Kerala Value Added Tax Act, 2003 ('KVAT Act' for short) was initiated against the petitioner for non deducting the tax, deductible at source, from the awardee, a works contractor.

2. The penalty proceedings were initiated and concluded for the years 2009-2010 to 2013-2014. The petitioner filed revisions before the Revisional

Authority. The petitioner also produced the building permit at Ext.P1 dated 13.1.2012, after which alone the construction work had commenced. It was also the case of the petitioner that there was no works contract and there was only a labour contract to the awardee. The penalty orders passed were set aside and remanded by Ext.P2 series of orders.

3. For the year 2009-2010, the Revisional Authority found that there was no payment to the contractor during the said year and no Tax Deduction at Source (TDS) could be made. Relying on the petitioner's contention that the work awarded was only a labour contract, the Assessing Officer was directed to verify the records. The Assessing Officer passed Ext.P6, on remand being made, which is impugned herein.

4. At the outset it is to be noticed that Ext.P6 has restored the earlier orders for reason of the petitioner having not produced the books of accounts as directed in the remand order. The said practice of restoring the order is not proper, since the revisional authority has set aside the earlier orders and the original authority cannot attempt a restoration of the earlier order merely on a statement to that effect. If at all the earlier reasoning has to be again made; then it should be done by a speaking order where the very same reasoning could be adopted in so many words. This again is not a mere procedural rigmarole and it should be a consideration made afresh. The Assessing Authority has to apply its mind and pass reasoned orders when there is a remand made even if the directions to the assessee for production of books of accounts or any other document ia also not complied with.

5. Further, it is a specific contention of the petitioner that there was a notice issued by the Intelligence Officer attached to the Office of the Deputy Commissioner (Intelligence), as per Ext.P3, which directed the appearance of the petitioner with documents through himself or through an authorised representative on 23.11.2016. It is also the contention of the petitioner that the entire books of accounts were produced on 23.11.2016. However, as is seen from the second paragraph of Ext.P6, the Deputy Commissioner (Intelligence), found that the petitioner had received the remand order on 09.09.2016 and since the direction is to produce the books of accounts within two weeks, the petitioner ought to have produced the books of accounts before 01.10.2016.

6. That is a very technical view taken, not in consonance with the principles of natural justice and it goes against the specific notice issued at Ext.P3 for production of the documents and appearance on 23.11.2016. When an appellate or revisional authority on remand made, prescribes a time frame for production of material evidence, the orginal authority need not take it as the final word and could always relax the time frame, on sufficient cause shown. Here the original authority had on remand, issued a notice for appearance and production of documents. There should hence have been a consideration made afresh, looking into the materials produced on the date notified. The orders impugned are improper, illegal and arbitrary.

7. On the above reasoning, Ext.P6 series would stand set aside. The petitioner shall again appear with

the books of accounts on 01.02.2017. The Assessing Officer shall verify the books of accounts and shall intimate a date of hearing and personal acknowledgment received of the date of hearing and orders passed in consonance with the remand orders made by the Revisional Authority, within a period of one month from the date of hearing.

The writ petition is allowed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj 18/1/17