IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 30TH DAY OF JANUARY 2017/10TH MAGHA, 1938

WP(C).No. 1799 of 2017 (Y)

PETITIONER:

SABITH K.A,
PROPRIETOR, ROYAL TRADERS, THOYAKKAVU.

BY ADVS.SMT.S.K.DEVI
SRI.SHANMUGHAM D. JAYAN

RESPONDENT(S):

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1. THE COMMERCIAL TAX OFFICER,
DEPT. OF COMMERCIAL TAXES, CHAVAKKAD-680 307.

2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER SRI V.K.SHAMSUDHEEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-01-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.V.

WP(C).No. 1799 of 2017 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE ORDER NO.32081100726/2012-13 DATED 20.12.2016**
EXHIBIT P2	**TRUE COPY OF THE NOTICE NO.32081100726/2012-13 DATED 27.10.2016**
EXHIBIT P3	**TRUE COPY OF THE REPLY DATED 30.11.2016.**
EXHIBIT P4	**TRUE COPY OF THE E-REQUEST DATED 29 AUGUST 2013 MADE BY THE PETITIONER.**
EXHIBIT P5	**TRUE COPY OF THE REQUEST UNDER RI ACT DATED 09.11.2016**

RESPONDENT(S)' EXHIBITS NIL

/TRUE COPY/

P.A.TO JUDGE

K.V.

K. VINOD CHANDRAN, J.

W.P.(C) No. 1799 of 2017 (Y)

Dated: 30th January, 2017

J U D G M E N T

The petitioner is aggrieved with Ext.P1 order of assessment passed against the petitioner and the estimation made in the said order. The petitioner's contention is based on Ext.P4, an e-mail communication said to have been sent to the Assessing Officer on 29.08.2013.

2. Admittedly, there were certain defects noticed by the Assessing Officer in the return filed by the petitioner and a proposal for re-opening was issued under Section 25(1) of the Kerala Value Added Tax Act, 2003 ('Act' for short) dated 27.10.2016, produced as Ext.P2. The assessment was completed as per Ext.P1.

3. The petitioner's contention is that the petitioner had detected the defects noticed by the Assessing Officer when audit was conducted of the accounts of the petitioner. It was in that context that the petitioner sent an e-mail, as per Ext.P4, for revision of return, which is said to be dated 29.08.2013. Admittedly, the petitioner did not pursue the application for revision and waited till three years, when a proposal for re-opening was issued under Section 25(1) of the Act dated 27.10.2016. A reply was filed at Ext.P3, in which a contention was taken with respect to the e-mail sent on 29.08.2013.

4. Rightly, the Assessing Officer refused to reckon the application filed through e-mail, as one properly filed under sub section (2) of Section 42 of the Act. Sub section (2) of Section 42 of the Act requires the dealer to file a revised annual return, rectifying the

mistake or omission along with the audit certificate; none of which has been done by the petitioner. The e-mail said to have been sent by the petitioner to the Commercial Tax Officer, is not a proper mode of applying for revision, as statutorily prescribed. The dealer also has certain contentions against the defects noticed, which, however, would not be possible of consideration under Article 226 of the Constitution of India. The dealer would have to definitely approach the appellate authority for a proper challenge to Ext.P1.

5. In the circumstances noticed above, this Court declines jurisdiction under Article 226 of the Constitution. The petitioner, if approaching the appellate authority, the delay caused between 17.01.2017, the date on which the writ petition was filed, and today would not be reckoned.

The writ petition is dismissed. No Costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj 30/1/17