

WWW.LIVELAW.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 17TH DAY OF JUNE 2021 / 27TH JYAISHTA, 1943

WA NO. 774 OF 2021

AGAINST THE JUDGMENT IN WP(C) 6200/2021 OF HIGH COURT OF KERALA,
ERNAKULAM

APPELLANT/PETITIONER:

M/S. EURO BUSINESS SYSTEM
ROOM NO A.381, 4TH FLOOR, BLOCK 1, NEW BUS STAND,
THAVAKKARA, KANNUR-670 001, REPRESENTED BY ITS PARTNER-
MR.PRAKSH.T.

BY ADVS.

M.GOPIKRISHNAN NAMBIAR
K.JOHN MATHAI
JOSON MANAVALAN
KURYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001
2. STATE TAX OFFICER, 3RD CIRCLE, KERALA STATE GST DEPARTMENT
4TH FLOOR, BSNL BHAVAN, SOUTH BAZAR, KANNUR-670012

OTHER PRESENT:

SR GP SRI.SHAMSUDHEEN V.K.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17.06.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Murali Purushothaman, J.

The appellant, a dealer of printers, peripherals and its parts has approached this Court challenging Ext.P4 order of assessment issued by the State Tax Officer and Ext.P8 order rejecting the rectification application. Ext.P4 order of assessment is impugned on the ground that the same is passed without considering Ext.P3 reply filed by the appellant and Ext.P8 order rejecting the rectification application is challenged on the ground that it was passed without addressing the apparent error on the face of record pointed out by the appellant. The learned Single Judge dismissed the writ petition holding that the question whether the assessing officer ought to have considered the reply submitted subsequently needs to be considered by the statutory

appellate authority by calling for records and proceedings of the assessment order and the appellant has remedy of approaching the appellate authority in that regard. The learned Single Judge held that the error pointed out by the appellant in the rectification application is not self evident or manifest and refused to interfere with Ext.P8 order rejecting the rectification application. It is challenging the judgment of the learned Single Judge dismissing the writ petition this writ appeal is preferred.

2. We have heard Sri. Kurian Thomas, the learned Counsel for the appellant and Sri. V.K. Shamsudheen, the learned Senior Government Pleader for the respondents.

3. According to the Appellant, in response to Ext.P1 pre-assessment notice dated 10.08.2020 issued under Section 25 (1) of the Kerala Value Added Tax Act, 2003 (KVAT Act, for short) for the year 2016-17, the appellant, pursuant to Ext. P2 notice appeared before the State Tax Officer on 29.09.2020

and sought time for filing reply, which was agreed upon to be filed on or before 25.10.2020. Accordingly, the appellant filed Ext. P3 reply on 22.10.2020 objecting to the proposals in Ext. P1 notice, the receipt whereof is evident from the endorsement on Ext. P3. While so, on 10.12.2020, the appellant received Ext.P4 ex-parte order dated 30.09.2020, wherein the 2nd respondent completed the best judgment assessment for the year 2016-17, holding that there is no response to the notice issued to the appellant. According to the appellant, Ext.P4 order was despatched from the office of the 2nd respondent after 64 days from the date of order borne out from Ext.P4, and the order is predated so as to show on record that the order of assessment was issued much prior to the filing of Ext.P3 reply. The appellant contends that, it is trite law that, until the assessment order is served on the assessee, the assessment is not complete and Ext. P3 reply filed by the assessee on 22.10.2020 ought to have been

considered by the assessing authority.

4. When the Writ Appeal came up for admission on 16.06.2021, we asked the learned Senior Government Pleader to get instructions in the case and accordingly, the matter was posted today. The learned Senior Government Pleader has made available a manuscript copy of Ext.P4 order which was received by him by Email from the 2nd respondent.

5. Having perused Ext.P4 the typed copy of the assessment order and also the manuscript copy of the same and considering the fact that Ext.P4 was despatched from the office of the 2nd respondent only after 64 days from the date of order shown in Ext.P4, that too, after receipt of Ext.P3 reply filed by the assessee, we find that Ext.P3 reply filed by the assessee was well within the knowledge of the 2nd respondent before the order was issued for communication to the assessee. Non consideration of Ext.P3 reply filed by the assessee therefore amounts to violation of the principles of

natural justice. Accordingly, Ext.P4 is set aside. The 2nd respondent is directed to pass an order afresh by looking into Ext.P3 reply given by the assessee on 22.10.2020. The said exercise shall be completed within eight weeks from the date of receipt of copy of this judgment. We make it clear that we have not expressed any opinion on the merits of the matter.

The appeal is allowed as indicated above.

Sd/-

S.V.BHATTI
JUDGE

Sd/-

MURALI PURUSHOTHAMAN
JUDGE

spc/