IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2018

BEFORE

THE HON' BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION NO.17552/2018 (T-RES)

BETWEEN:

M/S. SEASONS FRESH,
CRYSTAL DOWNS, EMBASSY GOLF LINKS,
BUSINESS PARK, OFF IMMEDIATE RING ROAD,
DOMLUR,
BANGALORE – 560071
REPRESENTED BY ITS PROP:
MONNAPPA K.B.
AGED ABOUT 47 YEARS,

... PETITIONER

(BY SRI K. M. SHIVAYOGISWAMY, ADVOCATE)

AND:

THE COMMERCIAL TAX OFFICER
VIGILIENCE -2,
ROOM NO.508, VTK-2,
NEAR NGV KORAMANGALA,
BANGALORE - 560047.

... RESPONDENT

(BY SRI VEDAMURTHY, T.K., AGA)

...

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED REASSESSMENT ORDER DATED 07.03.2018 AND THE CONSEQUENTIAL DEMAND NOTICE DATED 07.03.2018 PASSED BY THE RESPONDENT UNDER THE PROVISIONS OF KVAT ACT IN RELATION TO THE ASSSESSMENT PERIOD 2011-12 IN THE PETITIONER'S CASE VIDE ANNEXURE-A;

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THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has filed the present writ petition for a writ of certiorari to quash the impugned re-assessment order dated 7.3.2018 bearing CAS No.KVAT: 213404082 issued by the respondent under the provisions of the Karnataka Value Added Tax Act (for short hereinafter referred to as 'the KVAT Act') in relation to the assessment year 2011-12 and also writ of mandamus directing the respondent not to proceed for recovery of the disputed tax amount as per the endorsement.

2. It is the case of the petitioner that for the assessment year 2011-12, he had filed monthly return of turnover in the Form duly declaring all the transactions under the Act and remitted the applicable taxes thereon. The petitioner filed his return of turnover under Section 35 of the Act and the paid the

taxes thereon under the provisions of Section 38 of the Act which is deemed to have been assessed. Consequently, the returns filed under the Act has been deemed to be assessed. It is further contended that the Commissioner of Commercial Taxes has issued assignment Note on 30.11.2013 to the petitioner calling upon him for producing the books of accounts for the assessment year 2011-12 for the purpose of auditing. Consequently, after a lapse of four years, a notice had been issued under Section 52(1) of the Act in Form 275 for production of books of accounts and related documents for verification.

3. It was further contended that as per Section 52(1)(b) of the KVAT Act authorizes the prescribed authority to direct such dealers to produce at such time and at such place accounts, registers and documents relating to his business activities for examination. On receipt of the notice, the petitioner personally appeared

before the prescribed authority and requested some time to produce the books of accounts as the period pertained to 2011-12. It is further contended that the concerned authority without affording reasonable opportunity to produce books of accounts on the ground that the assessment period is going to be barred by limitation has initiated ex-parte proceedings relying on the information available on VAT Soft and stated to be issued proposition notice through RPAD. If the prescribed authority has ground to believe that any return furnished is deemed as assessed or any assessment issued under Section 38 of the Act states that correct tax liability of the dealer, may pass a re-assessment order under Section 39 of the Act, after giving the dealer an opportunity of showing cause against such re-assessment in writing. It was further contended that as already stated above, the authorities without affording reasonable opportunity to produce records and accounts and to file objections, has proceeded to pass the impugned re-assessment order. Hence, the present writ petition is filed for the relief sought for.

4. I have heard the learned Counsel for the parties to the lis.

5. Sri K.M. Shivayogiswamy, learned Counsel for the petitioner contended that the impugned re-assessment order passed by the assessing authority, without affording reasonable opportunity to produce books of accounts and to file reply to the proposed notice, is illegal and in violation of principles of natural justice. He would further contend that the authorities, who under the Act have been entrusted with quasi-judicial functions should accord fair and proper hearing to the persons sought to be affected by their orders, but the same has not been done in the present case. Therefore, he sought to allow the writ petition.

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6. Per contra, Sri Vedamurthy. T.K., learned AGA sought to justify the impugned order and contended that though the notice was issued to produce books of accounts, the petitioner has neither produced books of accounts nor has filed objections within time. Hence, the authorities were justified in passing the impugned order based on the available records. Therefore he sought to dismiss the writ petition.

7. Having heard the learned Counsel for the parties to the lis, the main grievance of the petitioner in the present writ petition is that the impugned re-assessment order dated 7.3.2018 and the consequential demand notice dated 7.3.2018 are in utter violation of the principles of natural justice. The material on record clearly depicts that though notice was issued directing the petitioner to produce books of accounts, he has not produced within time, but the order does not reflect that an opportunity of being heard was given to the

petitioner as contemplated under the provisions of the KVAT Act.

8. In view of the admitted facts as stated supra, it is suffice to direct the authorities to reconsider the matter afresh by giving notice and affording an opportunity of being heard to the petitioner and pass orders in accordance with law in view of the fact that the petitioner has already deposited 50% of the demanded amount on 21.5.2018 in terms of the order dated 24.4.2018 passed by this Court.

9. For the reasons stated above, the writ petition is allowed. The impugned re-assessment order dated 7.3.2018 and consequential demand notice dated 7.3.2018 issued by the respondent for recovery of the disputed tax amounts in relation to the assessment year 2011-12 as per Annexure-A are hereby quashed. The matter is remanded to the Re-assessing Authority-respondent to pass fresh orders in compliance of the

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provisions of the KVAT Act after giving an opportunity of being heard and strictly in accordance with law within a period of fifteen days from the date of receipt of a copy of this order.

10. The petitioner is directed to appear before the respondent on 15.6.2018.

Ordered accordingly.

Sd/-
Judge

Nsu/-

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