

F3.35194/15

Office of the Commissioner of
Commercial Taxes
Tax Tower, Karamana
Thiruvananthapuram
Dated 11/11/2015

Circular No.27/2015

Sub:- CTD – KVAT Act and Rules – Decision of Hon'ble High Court of
Kerala – Observance of natural justice – reg:-

Ref:- Judgment in WP(C) No.30187/2015 dtd 9.10.2015 of the Hon'ble
High Court of Kerala

It has come to the notice that certain assessing authorities are completing the assessments without giving reasonable opportunity to the dealer to file replies to the notices and also denying opportunity of personal hearing which is highly irregular and amounts to violation of principles of natural justice. Such assessments are found to be not legally sustainable in appeals. While finalising assessments the dealers have to be provided with reasonable time to file objections to the notices issued, if any, and also have to be given opportunity of being heard in person, if they so desire. The rule of natural justice will be violated in substance and content if reasonable opportunity is not afforded. Denial of the aforesaid requirements tantamounts to violation of natural justice, which naturally calls for interference by appellate authorities, thereby the very purpose of completing assessment will be defeated.

While disposing the WP(C) No.30189/15 filed by Shamon.K.S., the Hon'ble High Court of Kerala observed that the assessing authority after serving notice to the dealer intimating him of the proposal to complete the assessment on best judgement basis, the assessing authority passed order on the very next day without giving the dealer an opportunity of hearing thereby rendering the purpose of the notice meaningless. It is a clear violation of natural justice and hence quashed the orders. In the concluding part of the judgment the Court observed as follows :-

“ Before parting with this case, it would be useful to remind the revenue authorities in the State that the taxman is today an abhorred person and , perhaps , for a valid reason. He is often seen as a person who arrives, armed with the authority of law, to take money away from a person who has it. The animosity against taxes is a shared one and the oft-quoted expression by Benjamin Franklin that “ in this world nothing can be said to

be certain, except death and taxes” echoes the sentiments that successive generations of people have harboured against taxes. This state of affairs must change, for an honest, fair and efficient tax administration can bring about a substantial decline in litigation in this area of law and ensure happiness matching utilitarian expectations”.

As per the KVAT Act and Rules, when assessment is completed on best judgement basis under sections 22,23,24 read with Rules 34,35 & 38, the assessing authority may serve a notice to the dealer calling upon him to produce the books of accounts to prove his turnover and tax liability at a place and time as specified in the notice. If the dealer fails to prove the correctness of the turnover, the assessing authority shall proceed to make the best judgment assessment. The dealer shall be given a reasonable opportunity of being heard before completing the best judgment assessment.

In the circumstances, all the authorities concerned are hereby directed to strictly comply with the procedural requirements incidental to completion of assessment and penalty in order to avoid violation of principles of natural justice.


Commissioner