

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI PCHALY

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

W.A.No. 1094 of 2015 IN WP(C).12164/2015

AGAINST THE JUDGMENT IN WP(C) 12164/2015 of HIGH COURT OF KERALA DATED 10.4.2015

APPELLANT/PETITIONER:

M.D.ESTHAPPAN INFRASTRUCTURES (P) LTD.
144, RAILWAY STATION NAGAR, ANGAMALY
ERNAKULAM DISTRICT
REPRESENTED BY ITS MANAGING DIRECTOR
SRI.M.D.ESTHAPPAN.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENTS/RESPONDENTS:

1. THE COMMERCIAL TAX OFFICER (WORKS CONTRACT)
MATTANCHERRY-682 002
2. THE ASST.COMMISSIONER (APPEALS)
COMMERCIAL TAXES, THEVARA, ERNAKULAM
KOCHI-682015.

R BY GOVERNMENT PLEADER SRILIJU STEPHEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal No.1094 of 2015

Dated this the 3rd day of June, 2015

JUDGMENT

Antony Dominic, J.

Appellant filed writ petition challenging the conditional orders of stay passed by the second respondent in the stay petitions filed by them along with the appeals against the assessment orders under the KVAT Act for the assessment years 2009-2010 to 2011-2012. The learned Judge having declined to interfere, this appeal is filed.

2. We heard the counsel for the appellant and the learned Government Pleader appearing for the respondent.

3. The Ext.P7 series are the conditional stay orders passed by the Appellate Authority which show that the stay sought for by the appellant has been granted subject to the appellant depositing 30% of the amount due. This order was challenged before the learned Single Judge primarily on the basis that stay order did not contain reasons and that, therefore, it is an order passed without any application of mind.

Judgment under appeal shows that the learned Single Judge, after perusing Ext.P7, came to the conclusion that there was no substance in the contention. We too have gone through Ext.P7 series of orders and do not find any illegality in the view taken by the learned Single Judge. We, therefore, do not find any reason to interfere with Ext.P7 series of orders on the ground urged.

4. Counsel then contended that since the appellant has a very strong case on merits, the condition imposed by the Appellate Authority as confirmed by the learned Single Judge is too onerous. In our view, the fact that the appellant has strong grounds in the appeal only mean that in the interlocutory stage of considering the stay petition, the appellant has made out a strong prima facie case entitling him for an order. The condition subject to which such order is to be passed is a matter for the Appellate Authority to decide exercising its discretion. It is accordingly that the appellant was directed to remit 30% of the amount due. This condition imposed by

the Appellate Authority cannot said to be an onerous one. We are not satisfied that a case has been made out for interference. However, the time for complying with the conditions imposed by the Appellate Authority will stand extended by two weeks from today. It is also directed that with the compliance of the conditions as above, the hearing of the appeal will be expedited by the Tribunal.

Writ appeal is dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

jes

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P.A. to Judge