

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V. ASHA

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WA.No. 1967 of 2015 () IN WP(C).21243/2015

AGAINST THE JUDGMENT IN WP(C) 21243/2015 of HIGH COURT OF KERALA
DATED 15-07-2015

APPELLANT(S)/PETITIONER:

M/S. EDUSMART SERVICES PVT. LIMITED
DOOR NO. XIII/442, N.H 47, BYPASS ROAD
KUMBALAM, ERNAKULAM 682506
REPRESENTED BY ITS AUTHORIZED SIGNATORY SHIBU RASHEED

BY ADVS. SRI. V. DEVANANDA NARASIMHAM
SRI. P. H. RIYAS

RESPONDENT(S)/RESPONDENTS:

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1. THE INTELLIGENCE OFFICER
(INVESTIGATION BRANCH), COMMERCIAL TAXES
CIVIL STATION ANNEX, ALAPPUZHA - 688 011.
 2. THE ASSISTANT COMMISSIONER
(ASSESSMENT), SPECIAL CIRCLE III
COMMERCIAL TAX COMPLEX, ERNAKULAM - 682 015.
 3. THE DEPUTY COMMISSIONER
COMMERCIAL TAXES, THEVARA, ERNAKULAM 682015

R BY SR GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

W.A.No.1967 of 2015

Dated this the 8th day of September, 2015

JUDGMENT

Antony Dominic, J.

1.Appellant filed the writ petition challenging Ext.P11 order passed by the second respondent, by which, pending consideration of the appeal filed by them, collection of the disputed amount of penalty was stayed, subject to the appellant remitting 30% of the amount due and furnishing security for the balance. The writ petition was disposed of by the learned single Judge modifying the said condition and requiring the appellant to deposit ₹10 lakhs in two equal monthly instalments commencing from 10.8.2015. It is this judgment which is under challenge before us.

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

3.Ext.P11 order was passed on an application filed by the appellant, along with the appeal filed by them, where Ext.P3 order passed by the first respondent was under challenge. By this order, penalty under

section 67 of the KVAT Act was imposed. In the impugned order, the first appellate authority considered the merits of the case and on being satisfied that the appellant was entitled to a conditional order of stay, exercised its discretion and passed the order requiring them to deposit 30% of the total demand. Reading of the order shows that the authority has applied its mind to the contentions raised and it was thereafter that the condition was imposed.

4. Though the learned single Judge has sustained the order of the first appellate authority, still, in exercise of his discretion under Article 226 of the Constitution of India, the condition was modified, requiring the appellant to deposit ₹10 lakhs, which works out to roughly 15% of the total dues. Such a judgment cannot be said to suffer from any illegality to be interfered with in an appeal filed before us.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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PS to Judge