IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WA.No. 1447 of 2014 ()

WP(C) 6530/2014 of HIGH COURT OF KERALA

APPELLANT/PETITIONER :

M.V.REJIMON, PROPRIETOR,
AISWARYA FOODS & BEVERAGES,
MANNATHOOR.P.O., ERNAKULAM-686723.

BY ADV. SRI.RAJAGOPAL PADIPPURACKAL

RESPONDENTS/RESPONDENTS :
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
COMMERCIAL TAXES DEPARTMENT, TRIVANDRUM-695001.

2. THE DEPUTY COMMISSIONER(APPEALS),
DEPARTMENT OF COMMERCIAL TAXES DEVELOPMENT,
ERNAKULAM-682015.

3. ASSISTANT COMMISSIONER(APPEALS),
DEPARTMENT OF COMMERCIAL TAXES DEVELOPMENT,
ERNAKULAM-682015.

4. THE COMMERCIAL TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES, MUVATTUPUZHA,
ERNAKULAM-686661.

5. THE DEPUTY TAHSILDAR(REVENUE RECOVERY),
MUVATTUPUZHA, ERNAKULAM-686669.

BY GOVERNMENT PLEADER SRI. LIJU V. STEPHEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

bp

THOTTATHIL B.RADHAKRISHNAN
&
K.HARILAL, JJ.
x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x
W.A. No. 1447 of 2014
x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x

Dated this 14th day of January, 2015

<u>J U D G M E N T</u>

<u>Thottathil B.Radhakrishnan, J.</u>

Admitted. Learned Senior Government Pleader takes notice. Service complete. Heard learned counsel for the parties, on their consent, for final disposal.

2. Appellant, an assessee under the Kerala Value Added Tax Act, 2003, for short, the 'Act', filed returns. As authorised by the jurisdictional Deputy Commissioner, an audit visit was conducted under Section 23(4) of the Act. That led to the issuance of a notice on 8.10.2012 proposing to reject the appellant's return and to complete the assessment for three consecutive years estimating the total sales turnover, to the best of judgment as specifically elaborated in the statutory notice under Section 24(1). The assessee did not file objections to that notice. That resulted in completion of assessment on best of judgment basis and issuance of consequential demand. The appellant filed statutory appeals

with applications seeking condonation of delay. Delay having been condoned, the appeals were entertained. In the applications for stay, the Appellate Authority granted stay, on condition of payment of 30% of the balance amount as per the demand and furnishing security for the remaining amount. The appellant challenged those conditions before the learned single Judge. That has been turned down. Hence this writ appeal.

3. The learned counsel for the appellant says that the impugned order reflects the expression of the mind of the appellate authority that the appellant had established a *prima facie* case for granting conditional stay. He argues that, if that were so, the fixation of condition of 30% deposit ought to have been made only by stating specific reasons for arriving at that percentage as the requirement for deposit. He makes profitable reference to the decision of this Court in **Archana Agencies** v. **Commercial Tax Officer** [2014 (2) KHC 360].

4. *Per contra*, the learned Senior Government Pleader argued that the materials on record disclose fair application of mind by the Appellate Authority and grant of stay being a matter of discretion, the learned single Judge was justified in

dismissing the writ petition.

5. Keeping aside the niceties of principles of law governing the reasoning process while dealing with applications for grant of stay, in the case in hand, the fact of the matter remains that the appellant had permitted the assessment to be completed on best of judgment basis without answering the show cause notice or objecting to the proposal made in the notice under Section 24(1) of the Act. That being so, there was no material, whatsoever, to criticize the Assessing Authority for having adopted the mode it had. May be that, even in the appeal, the ultimate analysis is to find out whether the appellant is entitled to a further opportunity by way of remand. In such cases, it may be too far fetched for us to insist that the Appellate Authority should have categorized the ground of appeal to ascertain the amount for which stay would be granted, on conditions. Hence, while we do not find any way to disagree with the reasoning in **Archana Agencies** (*supra*), in so far as the case in hand is concerned, the learned single Judge was justified in dismissing the writ petition.

6. All that we would do in the aforesaid circumstances is to direct the Appellate Authority to consider the appeal, out of turn, primarily to see whether the matter needs to be remitted. This shall be done within two months of the appellant complying with the conditions imposed while granting the order of stay. Time for compliance of those conditions is hereby extended till 31.1.2015, as last opportunity.

This writ appeal is ordered accordingly.

Sd/-
THOTTATHIL B.RADHAKRISHNAN
JUDGE

Sd/-
K.HARILAL
JUDGE

rka /true copy/

P.S. TO JUDGE.