

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WA.No. 2020 of 2015 () IN WP(C).23929/2015

APPELLANT(S):

FOOD CORPORATION OF INDIA
REGIONAL OFFICE, KESAVADASAPURAM,
THIRUVANANTHAPURAM-695004
REPRESENTED BY ITS AREA MANAGER
SRI AUGUSTIN CLINTON OLIVERO

BY ADVS.DR.K.P.PRADEEP
SRI.T.T.BIJU
SRI.K.P.KESAVAN NAIR
SMT.T.THASMI

RESPONDENT(S):

1. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001
2. PRINCIPAL SECRETARY TO TAXES,
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001
3. THE ASSISTANT COMMISSIONER (ASSESSMENT)
SPECIAL CIRCLE, DEPARTMENT OF COMMERCIAL TAXES,
TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM
4. DEPUTY COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES, THIRUVANANTHAPURAM
5. INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM-695002
6. THE COMMISSIONER OF COMMERCIAL TAXES,
DEPARTMENT OF COMMERCIAL TAXES,
GOVERNMENT OF KERALA, TAX TOWERS,
KARAMANA, THIRUVANANTHAPURAM

WA.No. 2020 of 2015 () IN WP(C).23929/2015

7. SOUTHERN RAILWAY, HEAD QUARTERS,
AYANAVARAM, TAMIL NADU-600023
REPRESENTED BY ITS GENERAL MANAGER

BY SR.GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

dlk

ANTONY DOMINIC & P.V.ASHA, JJ.

W.A No. 2020 of 2015

Dated this the 14th day of September, 2015

JUDGMENT

Antony Dominic, J.

Ext.P7 appeal was filed by the appellant against Ext.P6 order of assessment. Along with the appeal, the appellant filed an application for stay of recovery of the disputed tax and interest. The appellate authority considered the stay petition and passed Ext.P10 order granting stay on condition that the appellant deposits 30% of the disputed amount. That order was challenged before this Court and in Ext.P11 judgment, this Court ordered reconsideration of the matter. Accordingly, the matter was reconsidered and Ext.P12 order was passed. In this order also the appellate authority has imposed a condition that the appellant shall remit 30% of the disputed amount and furnish security for the balance. Challenging Ext.P12 the appellant filed W.P.C.No.23929/2015. By the impugned judgment, the learned Single Judge declined to interfere with the order but extended time for complying with the same. It is this judgment which is under challenge before us.

2. We heard the learned counsel appearing for the appellant and the learned Government Pleader appearing for respondents 1 to 6. Standing Counsel appearing for R7 was also heard.

3. Submissions made by the learned counsel for the appellant were, essentially regarding the merits of the appeal and the unsustainability of Ext.P6 order which is impugned in the appeal. Having heard this submission, we are inclined to think that while considering the stay petition, the appellate authority is only concerned with the question whether the appellant has made out a prima facie case and is not concerned with the merits of the appeal which are matters to be considered by it at the time when the appeal is finally heard. Reading of Ext.P10 order shows that the appellate authority had adverted to the contentions raised by the appellant and the findings in the impugned order. On that basis the appellate authority was satisfied that the appellant was entitled to a conditional order of stay and it was accordingly that, exercising its discretion, the appellate authority has passed Ext.P12 order. This order or the judgment confirming the order, according to us, does not suffer from any

illegality warranting interference. Therefore the judgment does not merit interference.

4. It is directed that once the condition is complied with, the appellate authority will dispose of the appeal within three months thereafter. It is also clarified that the contention of the appellant raised as (iv)th prayer in the writ petition, for placing the matter before the High Power Committee constituted by Government of Kerala, is left open.

Appeal fails and accordingly it is dismissed.

Sd/-

ANTONY DOMINIC

JUDGE

Sd/-

P.V.ASHA

JUDGE

dlk/14/9/