IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WA.No. 2161 of 2015 () IN WP(C).27947/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 27947/2015 of HIGH COURT OF KERALA DATED 16-09-2015

APPELLANT(S)/PETITIONER:

ASHOK KUMAR,
PROP. CREATIVE TRADING COMPANY, AMBADIYIL HOUSE,
ADINAD SOUTH, KATTILKADAVU P.O, KARUNAGAPPALLY.

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR
SMT.V.P.SEENA DEVI

RESPONDENT(S)/RESPONDENTS:
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1. COMMERCIAL TAX OFFICER (WORKS CONTRACT),
   KOLLAM - 691 001.

2. DEPUTY COMMISSIONER(APPEALS),
   COMMERCIAL TAXES, KOLLAM 691 001.

3. DEPUTY COMMISSIONER,
   COMMERCIAL TAXES, KOLLAM 691 001.

4. TAHSILDAR,
   TALUK OFFICE, KARUNAGAPPALLY 691 004.

R BY SMT.SOBHA ANNAMMA EAPEN, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

W.A.No.2161 of 2015

Dated this the 6th day of October, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. This appeal is against a decision of the learned single Judge refusing to interfere with conditions imposed while granting stay in statutory appeals against two assessment orders and two penalty orders under the KVAT Act.

2. We have heard the learned counsel for the appellant and the learned Senior Government Pleader and have bestowed our anxious consideration to the facts and circumstances emanating out of the entire materials on record.

3. In so far as the assessment appeals are concerned, we are of the view that the learned single Judge was justified in saying that the order issued by the appellate authority while granting

stay had contained reasons for the conditions that were imposed. The non-production of any further documents or materials to contradict the findings of the assessment authority was a ground taken. That is sufficient enough as a material and ground for the conditional order which the appellate authority had passed in relation to the assessment appeals. We, therefore, reject the contention of the appellant in that regard.

4. In so far as the appeals against penalty orders are concerned, we see that the only reasoning given by the Deputy Commissioner, while granting stay is that sustainability of rival contentions can be examined only at the time of final hearing, though it was found that the petitioner/assessee had established a prima facie case. The eligibility for stay is one thing. Authority to impose a condition while granting stay is a matter which is also to be reflected on the basis of the decision making process emanating out of the order itself. We have seen the copies of the appeal memorandum, pending before the statutory authority. We have seen the quality of the assessments and the penalty orders. We think that ends of

justice would be satisfied if the order of stay granted through Exhibit P11 in the writ petition is modified to, on payment of 25% of the disputed amount of ₹2,60,602/- (Rupees six lakh sixty thousand six hundred and two only) for the year 2011-2012 and 25% of the amount of ₹6,38,378/- (Rupees six lakh thirty eight thousand three hundred and seventy eight only) for the year 2012-2013 to sustain the said order of stay, provided this modified condition is complied with along with the condition regarding the stay order in the assessment appeals on or before 31.10.2015.

Appeal ordered accordingly.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG/6/10/15