IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WA.No. 2629 of 2015 () IN WP(C).34705/2015

AGAINST THE JUDGMENT IN WP(C) 34705/2015 of HIGH COURT OF KERALA DATED 19-11-2015

APPELLANT/PETITIONER IN WPC:

M/S. THE LEELA KOVALAM
A UNIT OF HOTEL LEELA VENTURE LTD., KOVALAM
THIRUVANANTHAPURAM-695 527
REPRESENTED BY ITS GENERAL MANAGER, MR.N.C.SOMAIAH.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH MENON
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

RESPONDENTS/RESPONDENTS IN WPC:
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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM- 695 001.

2. THE SALES TAX OFFICER (ENQUIRY)-I
LUXURY TAX, OFFICE OF THE DEPUTY COMMISSIONER
COMMERCIAL TAXES, THIRUVANANTHAPURAM-695 002.

3. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, THIRUVANANTHAPURAM-695002.

R1 BY SR. SPECIAL GOVERNMENT PLEADER(TAXES) SRI.S.SUDHEESH KUMAR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VPV

P.N.RAVINDRAN & BABU MATHEW P. JOSEPH, JJ.

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W.A.No.2629 of 2015

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Dated this the 21st day of December, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is an assessee on the files of the second respondent. By Ext.P1 assessment order passed on 27.04.2015, the second respondent assessed the petitioner to pay luxury tax under the Kerala Tax on Luxuries Act, 1976 on a total taxable turnover of ₹42,40,54,880/-. After giving credit to the sum of ₹5,02,05,597/- paid by the assessee, the assessee was called upon to pay the sum of ₹28,01,263/- together with interest aggregating in all to ₹41,45,869/-.

2. Challenging that order, the assessee filed an appeal before the Deputy Commissioner (Appeals), Trivandrum. In that appeal, the assessee also filed an application seeking stay of collection of the balance tax assessed as per Ext.P1. The appellate authority after hearing the appellant, passed Ext.P4 order on 7.10.2015 whereby the appellate authority stayed the collection of the balance tax subject to the condition that the appellant shall pay 30% of the same and furnish security for the balance amount to the satisfaction of the assessing authority, within three weeks from the date of receipt of the order.

3. Aggrieved by the stipulation in Ext.P4 order that it should deposit 30% of the disputed amount and furnish security for the balance amount, the assessee filed W.P.(C)No.34705 of 2015 in this court. The learned single Judge dismissed the writ petition holding that the stipulation regarding deposit of 30% of the disputed amount cannot be said to be onerous. The learned single Judge however granted to the assessee three weeks' time from 19.11.2015 to comply with the conditional order of stay passed by the appellate authority. The assessee has, aggrieved thereby, filed this writ appeal.

4. We heard Sri.P.Gopinath Menon, learned counsel appearing for the assessee and Sri.S.Sudheesh Kumar, learned Special Government Pleader appearing for the respondents on two different occasions. We have also gone through the entire pleadings and the materials which were placed before the assessing officer. Though Sri.P.Gopinath Menon, learned counsel appearing for the assessee made earnest attempts to convince us that the assessing officer has not applied his mind properly and the appellate authority has also erred in that regard, after hearing learned counsel appearing on both sides at length and after going through the files leading to the order of assessment, we are of the opinion that the assessee himself or in any case the representative of the assessee has to be blamed for that. We find from the files that the reply submitted by the assessee to the

show cause notice issued under section 6(2) of the Kerala Tax on Luxuries Act, 1976 was perfunctory and that material particulars had not been set out. The case now sought to be pleaded before us did not find a place in the reply to the show cause notice. We are reminded in this context about the fundamental duty cast on every citizen including lawyers under Article 51A(j) of the Constitution of India. Article 51A(j) stipulates that it shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. In the instant case, the citizen concerned namely the representative of the assessee has signally failed in putting forward material contentions. He has not chosen to strive for excellence in his sphere of activity. This court cannot on the materials on record enter a finding at this stage of the proceedings that the assessee has made out a prima facie case warranting the grant of an unconditional order of stay. In such circumstances, notwithstanding the fact that if we were to hear the appeal as the appellate authority, we might have come to a different conclusion after meticulously analysing the rival contentions is by itself not a reason to hold that the stipulation regarding the deposit of 30% of the disputed tax is an onerous condition.

We therefore find no good grounds to interfere with the impugned judgment. The writ appeal fails and is accordingly dismissed with the hope and trust that atleast in the days to come, lawyers representing assessees will put forward relevant facts supported by documentary evidence before the assessing officer/appellate authority and will not fail or omit to plead the facts properly or produce relevant documents in support of their contentions. We however deem it appropriate to enlarge the time for deposit stipulated in the conditional order of stay passed by the appellate authority till 15.01.2016 and to clarify that it will be open to the assessee to raise further pleadings if any before the appellate authority and also produce documentary evidence in support of such pleas.

Sd/-

P.N.RAVINDRAN
JUDGE

Sd/-

BABU MATHEW P. JOSEPH
JUDGE

/TRUE COPY/

P.A. TO JUDGE

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