IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 1034 of 2015 ()

PETITIONER:

C.M. ABDUL KHADER, PROPRIETOR, AGED 66 YEARS
M/S. M&S ENTERPRISES, KUTTIPPADAM, ALLAPPRA.P.O
PERUMBAVOOR.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER
   DEPARTMENT OF COMMERCIAL TAXES,
   2ND CIRCLE, PERUMBAVOOR-683542

2. DEPUTY COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   MATTANCHERRY – 682 001

3. THE ASSISTANT COMMISSIONER (APPEALS)
   DEPARTMENT OF COMMERCIAL TAXES,
   ERNAKULAM, KOCHI – 682 015

4. INSPECTING ASSISTANT COMMISSIONER,
   MUVATTUPUZHA – 686 661

5. THE INTELLIGENCE OFFICER (IB)
   DEPARTMENT OF COMMERCIAL TAXES,
   ERNAKULAM – 682 015

BY GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1034 of 2015 ()

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : A TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2007-08 ALONG WITH DEMAND NOTICE DATED.25.03.2014 PASSED BY THE 5TH RESPONDENT.

EXT.P1(A) : A TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2007-2008 ALONG WITH DEMAND NOTICE DATED. 27.03.2014 PASSED BY THE 1ST RESPONDENT

EXT.P1(B) : TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2008-2009 ALONG WITH DEMAND NOTICE DATED 30.09.2014 PASSED BY THE 1ST RESPONDENT.

EXT.P2 : A TRUE COPY OF THE APPEAL MEMORANDUM DATED 22.04.2014 (CST PENALTY) FILED BY THE PETITIONER AGAINST PENALTY ORDER FOR THE YEAR 2007-08.

EXT.P2(A) : A TRUE COPY OF THE APPEAL AGAINST ASSESSMENT FOR THE YEARS 2007-08 (CST ASSESSMENT) DATED 26.06.2014 FILED BEFORE 3RD RESPONDENT.

EXT.P2(B) : A TRUE COPY OF THE APPEAL AGAINST ASSESSMENT FOR THE YEARS 2008-09 DATED 18.12.2014 FILED BEFORE 3RD RESPONDENT.

EXT.P3 : A TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER AGAINST PENALTY ORDER FOR THE YEAR 2007-08 DATED 22.04.2014.

EXT.P3(A) : A TRUE COPY OF THE STAY PETITION AGAINST ASSESSMENT FILED BEFORE THE 3RD RESPONDENT FOR THE YEAR 2007-08 DATED 26.06.2014

EXT.P3(B) : A TRUE COPY OF THE STAY PETITION AGAINST ASSESSMENT FILED BEFORE THE 3RD RESPONDENT FOR THE YEAR 2008-09 DATED 18.12.2014

EXT.P4 : A TRUE COPY OF THE DEMAND NOTICE IN FORM NO.1 DATED 16.12.2014 ISSUED BY THE 4TH RESPONDENT.

RESPONDENT'S EXHIBITS : NIL

// TRUE COPY

P.A TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1034 OF 2015

Dated this the 12th day of January, 2015

J U D G M E N T

Aggrieved by Ext.P1 penalty order under the Central Sales Tax Act, hereinafter referred to as 'the CST Act' for the assessment year 2007-2008 and Exts.P1(a) and P1(b) assessment orders under the CST Act for the assessment years 2007-2008 and 2008-2009, the petitioner preferred Ext.P2 appeal and Ext.P3 stay petition before the 2nd respondent and Exts.P2(a) and P2(b) appeals and Exts.P3(a) and P3(b) stay petitions before the 3rd respondent. It is the case of the petitioner that even before the stay petitions were considered by the 2nd and 3rd respondents respectively, Ext.P4 demand notice has been issued seeking recovery of the amounts confirmed by Exts.P1, P1(a) and P1(b) orders.

2. Heard Sri.Firoz K.M., the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I dispose the writ petition with the following directions:

i. The 2^{nd} respondent shall consider and pass orders on Ext.P3 stay petition and the 3^{rd} respondent shall pass orders on Ext.P3(a) and P3(b) stay petitions within a period of two months from the date of receipt of a copy of this judgment.

ii. Further proceedings pursuant to Ext.P4 shall be kept in abeyance till such time as the 2^{nd} and 3^{rd} respondents pass orders as directed above and communicate the same to the petitioner.

iii. The orders to be passed by the 2^{nd} and 3^{rd} respondents shall be reasoned ones adverting to the contentions of the petitioner regarding existence of a prima facie case for a stay of recovery pending disposal of the appeals.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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