

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 1954 of 2015 (T)

PETITIONER(S):

**M/S.GEMINI INDUSTRIES AND IMAGING LTD.,
DIVISION 41, DOOR NO.830, PULLEPADY ROAD,
ERNAKULAM, COCHIN-682 035.**

**BY ADVS.SRI.ANIL D. NAIR,
SMT.C.S.SULEKHA BEEVI,
SRI.R.SREEJITH,
SMT.ROSIE ATHULYA JOSEPH,
KUM.SOUMYA PRAKASH.**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER - IV,
COMMERCIAL TAXES, 2ND CIRCLE,
ERNAKULAM-682 030.**
- 2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM- 682 030.**
- 3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES,
THIRUVANANTHAPURAM- 695 001.**

BY GOVT. PLEADER SMT.LILLY. K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1- TRUE COPY OF THE ASSESSMENT ORDER DATED 16.09.2014 FOR THE YEAR 2011-2012 ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT.
- P2- TRUE COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT FOR THE A.Y 2011-2012.
- P3- TRUE COPY OF STAY PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT FOR THE A.Y 2011-2012.
- P4- TRUE COPY OF THE ORDER DATED 10.12.2014 PASSED BY THE SECOND RESPONDENT FOR THE A.Y 2011-2012.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.1954 of 2015

.....
Dated this the 20th day of January, 2015

J U D G M E N T

Aggrieved by Ext.P1 assessment order under the Kerala Value Added Tax Act for the assessment year 2011-2012, the petitioner preferred Ext.P2 appeal and P3 stay petition before the 2nd respondent appellate authority. The appellate authority considered the stay petition and passed Ext.P4 order whereby, the petitioner was directed to pay 30% of the outstanding demand and to furnish security for the balance amount within 15 days from the date of receipt of the order as a condition for grant of stay. In the writ petition, Ext.P4 order is impugned inter alia on the ground that the 2nd respondent while considering the stay petition did not exercise his discretion validly.

2. Heard Sri.Anil D.Nair the learned counsel for the petitioner and Smt.Lilly K.T., the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that, in Ext.P4 order, the 2nd respondent has considered the submissions made by the petitioner, both with regard to the alleged violation of

natural justice as also on the merits of the case, and given reasons for not accepting the contentions of the petitioner while passing the stay order. The 2nd respondent has then found that, although the petitioner was entitled to a conditional order of stay, he would be required to remit 30% of the outstanding demand as a condition for the grant of stay of recovery of balance amount confirmed against him. I do not find any reason to interfere with Ext.P4 order passed by the 2nd respondent appellate authority. The writ petition in its challenge against Ext.P4 order, therefore, fails and is accordingly dismissed.

The learned counsel for the petitioner would pray for some time to comply with the directions in Ext.P4 order. Taking note of this submission of the learned counsel for the petitioner, I extend the time to comply with the directions in Ext.P4 till February 15th, 2015. Subject to the said direction, the writ petition in its challenge against Ext.P4 is otherwise dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/