IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 2531 of 2015 (N)

PETITIONER:

M/S.SAVEX COMPUTERS LTD.
39/4208 A&B, PRAKASH BHAVAN, RAVIPURAM ROAD
ERNAKULAM, KOCHI-682016,
REPRESENTED BY BIJUKUMAR.V, MANAGER.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:
----

1. ASST. COMMISSIONER (ASSESSMENT)
COMMERCIAL TAXES SPECIAL CIRCILE-II
ERNAKULAM 682 015

2. DEPUTY COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM 682 015

3. INSPECTING ASST. COMMISSIONER,
KAKKANADU,
ERNAKULAM-682 030

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 2531 of 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER ISSUED BY THE 1ST RESPONDENT

EXT.P2: COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT

EXT.P3: COPY OF ORDER PASSED BY THE 2ND RESPONDENT

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.A. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

- -

W.P.(C).NO.2531 OF 2015

- -

Dated this the 27th day of January, 2015

<u>J U D G M E N T</u>

The challenge in the writ petition is against Ext.P3 conditional order of stay passed by the second respondent in an appeal preferred by the petitioner against Ext.P1 assessment order. In the assessment order, the petitioner had claimed purchase returns in respect of a certain quantity of goods. The contention of the petitioner was not accepted by the assessing authority in its entirety and only certain quantities that were returned within the prescribed time limit of 90 days was accepted as purchase returns for the purposes of the assessment. The assessing authority, however, denied the input tax credit in respect of the entire purchases effected on the basis of the contention of the petitioner that the entire quantity had been returned and, therefore, fell within the category of purchase returns. It is aggrieved by the action of the assessing authority in denying the entire amount of input tax credit, while allowing the contention of the petitioner with regard to the purchase returns only to a certain extent, that the petitioner preferred an appeal before the second respondent. In Ext.P3 order, while considering the prima facie case urged by the petitioner, the second respondent found that there was no mistake in the assessment order, which was under challenge in the appeal.

2. On a reading of the assessment order, I find that, prima facie, what the assessing officer has done is not correct since one cannot deny input credit on the ground of the purchases having been returned, while at the same time treating some of the returned purchases as not so returned, owing to the fact that they were not returned within the time prescribed under the Act. Thus, there appears to be an inherent contradiction in the stand taken by the assessing officer. In this view of the matter, I quash Ext.P3 conditional order of stay and direct the second respondent to consider and pass orders in the appeal preferred by the petitioner before him, without insisting on any condition for the grant of stay pending disposal of the appeal. The second respondent shall pass orders in the appeal within a period of three months from the date of receipt of a copy of this judgment. It is made clear that recovery steps pursuant to Ext.P1 order shall be kept in abeyance till a decision is taken by the second respondent, as directed and communicated to the petitioner.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

jes