IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 3050 of 2015 (E)

PETITIONER(S):

N.A.RAJU, AGED 51 YEARS
PROPRIETOR OF OMEGA HERITAGE, THRISSUR
THRISSUR DISTRICT.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER**
   DEPARTMENT OF COMMERCIAL TAXES, POOTHOLE
   THRISSUR DISTRICT, PIN:680 004.

2. **THE ASSISTANT COMMISSIONER (APPEALS)**
   DEPARTMENT OF COMMERCIAL TAXES, POOTHOLE
   THRISSUR DISTRICT, PIN:680 004.

3. **TAHASILDAR (RR)**
   TALUK OFFICE, THRISSUR, THRISSUR DISTRICT
   PIN:680 020.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 3050 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE JUDGMENT WRIT APPEAL NO.301/2013 DATED 11.3.2013 OF HIGH COURT OF KERALA.

EXHIBIT P2: TRUE COPY OF THE ORDER NO.KVATA 37/13 DATED 6.6.2014 PASSED BY SECOND RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE JUDGMENT IN WPC NO.16417 OF 2014 DATED 2.7.2014 OF HIGH COURT OF KERALA.

EXHIBIT P4: TRUE COPY OF THE CLARIFICATION DATED NIL ISSUED BY SECOND RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE REQUEST DATED 1.12.2014 MADE BY THE PETITIONE RBEFORE THE FIRST RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE REQUEST DATED 29.12.2014 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXHIBIT P7: TRUE COPY OF NOTICE DATE 31.12.2014 ISSUED BY THE THRID RESPONDENT DISCLOSING THE SALE OF THE PETITIONER'S PROPERTY.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.3050 OF 2015 (E)

Dated this the 12th day of February, 2015

J U D G M E N T

The petitioner, who is aggrieved by an assessment order for the year 2005-06, under the KVAT Act, preferred an appeal before the 2nd respondent along with a stay petition. The stay petition was heard by the 2nd respondent and the petitioner was granted a conditional stay against recovery of the amounts confirmed by the assessment order, on the petitioner paying Rs.20,00,000/- as a condition for the grant of stay and furnishing security for the balance amount. The petitioner challenged the conditional order of stay before this Court through a writ petition. That was disposed by directing the petitioner to pay the amounts demanded by the 2nd respondent in installments. Thereafter, it is stated that the petitioner paid the said amounts but, notwithstanding the said payments, the revenue recovery authorities continued to proceed against the petitioner for realisation of the balance amounts confirmed against the petitioner by the assessment order. This prompted the petitioner to approach this Court again and the petitioner was directed to approach the 2nd respondent for a clarification with regard to the order passed by him. The 2nd respondent then passed Ext.P4 order clarifying that the petitioner had effected the payments directed in Ext.P2 order, but had not furnished the security that was required for the balance amounts. It was aggrieved by the continued action taken by the respondents to demand the balance tax amounts, that the petitioner approached this Court for a direction to the 1st respondent to permit the petitioner to comply with the remaining part of Ext.P2 order of the 2nd respondent, by executing the prescribed security bond.

2. I have heard Sri.M.K.Dileep Kumar, the learned counsel appearing for the petitioner as also Smt.Sobha Annamma Eappen, the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I note that this is a case where, after passing Ext.P2 order, the petitioner has effectively complied with the requirement of payment of Rs.20,00,000/- that was prescribed as a condition for the grant of stay in Ext.P2 order. The only condition that remains to be fulfilled by the petitioner is with regard to the execution of a security bond. When the matter came up for admission, I had directed counsel for the petitioner to produce a security bond for the purposes of producing before the 2nd respondent

in compliance with the directions in Ext.P2 order. Counsel for the petitioner produced a security bond which was then handed over to the learned Government Pleader for checking whether it was in the proper form. The learned Government Pleader would submit that the security bond is in the proper form, and she has handed over the bond to counsel for the petitioner. Taking note of this submission, I dispose the writ petition by directing the petitioner to produce the security bond before the 2nd respondent within two weeks from the date of receipt of a copy of this judgment. I make it clear that on the petitioner producing the security bond before the 2nd respondent, the 2nd respondent shall treat the conditions in Ext.P2 order as having been complied with, and proceed to hear the appeal preferred by the petitioner, on merits, within a period of three months thereafter, after hearing the petitioner. It is made clear that, till such time as orders are passed by the 2nd respondent in the appeal, and communicated to the petitioner, coercive steps for recovery of amounts pertaining to the assessment year 2005-06, shall be kept in abeyance.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp