IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 3953 of 2015 (T)

PETITIONER(S):

CHERIAN P.PUNNOSE, MANAGING PARTNER,
GENUINE ENTERPRISES, 28/207, INDIRAJI ROAD,
KANNANKULANGARA, TRIPUNITHURA, KOCHI-682 301.

BY ADV. SRI.JOSY ANTONY.

RESPONDENT(S):
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1. THE CHAIRMAN,
   KERALA VALUE ADDED TAX/ AGRICULTURAL
   INCOME TAX & SALES TAX APPELLATE TRIBUNAL,
   ADDITIONAL BENCH, KOTTAYAM-686 002.

2. THE DEPUTY COMMISSIONER (APPEALS) II,
   COMMERCIAL TAXES, KOTTAYAM
   (ON DEPUTATION TO ERNAKULAM), PIN-686 002.

3. THE COMMERCIAL TAX OFFICER,
   FIRST CIRCLE, KOTTAYAM-686 002.

BY GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 3953 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1. TRUE COPY OF THE ASSESSMENT ORDER NO.32050511482/2009-10 DATED 20/11/2010 PASSED BY THE 3RD RESPONDENT ALONG WITH THE DEMAND NOTICE.

EXT.P2. TRUE COPY OF THE PENALTY ORDER NO.32050511482/2009-10 DATED 18/11/2010 PASSED BY THE 3RD RESPONDENT ALONG WITH THE DEMAND NOTICE.

EXT.P3. TRUE COPY OF THE APPELLATE ORDER DATED 13/05/2013 PASSED BY THE 2ND RESPONDENT SALES TAX APPEAL NO.KVAT-224/2011 & 630/2011.

EXT.P4. TRUE COPY OF THE ASSESSMENT ORDER NO.32050511482/2010-11 DATED 28/12/2010 PASSED BY THE 3RD RESPONDENT ALONG WITH THE DEMAND NOTICE.

EXT.P5. TRUE COPY OF THE APPELLATE ORDER DATED 16/12/2013 PASSED BY THE 2ND RESPONDENT IN SALES TAX APPEAL NO.KVAT-631A/2011, 631B/2011, 631C/2011 & 631D/2011.

EXT.P6. TRUE COPY OF THE PENALTY ORDER NO.3205051148/2009-10 DATED 28/12/2010 PASSED BY THE 3RD RESPONDENT ALONG WITH THE DEMAND NOTICE.

EXT.P7. TRUE COPY OF THE APPELLATE ORDER DATED 16/12/2013 PASSED BY THE 2ND RESPONDENT SALES TAX APPEAL NO.KVAT-632A/2011, 632B/2011/632C/2011 AND 632D/2011.

EXT.P8. TRUE COPY OF THE ORDER NO.KVATA-224/2011 AND 632/2011 DATED 17/03/2011 PASSED BY THE 2ND RESPONDENT.

EXT.P8(A). TRUE COPY OF THE ORDER NO.KVATA-631/2011 DATED 17/03/2011 PASSED BY THE 2ND RESPONDENT.

EXT.P8(B). TRUE COPY OF THE ORDER NO.KVATA-630/2011 DATED 17/3/2011 PASSED BY THE 2ND RESPONDENT.

EXT.P9. TRUE COPY OF THE DEMAND DRAFT FOR RS.1,00,000/-. FURNISHED BY THE PETITIONER COMPLIANCE WITH EXT.P8 ORDER.

EXT.P9(A). TRUE COPY OF THE DEMAND DRAFT FOR RS.2,00,000/-. FURNISHED BY THE PETITIONER COMPLIANCE WITH EXT.P8(A) ORDER.

EXT.P9(B). TRUE COPY OF THE DEMAND DRAFT FOR RS.3,00,000/-. FURNISHED BY THE PETITIONER COMPLIANCE WITH EXT.P8(B) ORDER.

......2/-

EXT.P9(C)). TRUE COPY OF THE APPELLATE ORDER NO.KVATA-224/2011 AND 630/2011 DATED 13/05/2013 PASSED BY THE 2ND RESPONDENT.

EXT.P10. TRUE COPY OF THE APPEAL NO.KVATA-35/2014 SUBMITTED BEFORE THE 1ST RESPONDENT (EXCLUDING ANNEXURE).

EXT.P11. TRUE COPY OF THE APPEAL NO.KVATA-36/2014 SUBMITTED BEFORE THE 1ST RESPONDENT (EXCLUDING ANNEXURE).

EXT.P12. TRUE COPY OF THE APPEAL NO.KVATA-37/2014 SUBMITTED BEFORE THE 1ST RESPONDENT (EXCLUDING ANNEXURE).

EXT.P13. TRUE COPY OF THE APPEAL NO.KVATA-38/2014 SUBMITTED BEFORE THE 1ST RESPONDENT (EXCLUDING ANNEXURE).

EXT.P14. TRUE COPY OF THE STAY PETITION INT.P.NO.10/2014 IN KVATA NO.35/2014 SUBMITTED BEFORE THE 1ST RESPONDENT.

EXT.P15. TRUE COPY OF THE STAY PETITION INT.P.NO.11/2014 IN KVATA NO.36/2014 SUBMITTED BEFORE THE 1ST RESPONDENT.

EXT.P16. TRUE COPY OF THE STAY PETITION INT.P.NO.12/2014 IN KVATA NO.37/2014 SUBMITTED BEFORE THE 1ST RESPONDENT.

EXT.P17. TRUE COPY OF THE STAY PETITION INT.P.NO.13/2014 IN KVATA NO.38/2014 SUBMITTED BEFORE THE 1ST RESPONDENT.

EXT.P18. TRUE COPY OF THE COMMON ORDER DATED 10/12/2014 PASSED BY THE 1ST RESPONDENT IN INT.P.NO.10/2014, 11/2014,12/2014, AND 13/2014 IN KVATA NOS.35, 36, 37 & 38/2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.3953 OF 2015 (T)

Dated this the 9th day of February, 2015

J U D G M E N T

The petitioner, who is aggrieved by Exts.P1 and P4 assessment orders and Exts.P2 and P6 penalty orders, filed appeals before the 2nd respondent. The said appeals came to be dismissed by the 2nd respondent. The petitioner thereafter preferred Exts.P10 to P13 appeals before the 1st respondent Tribunal. Along with the appeals, he also filed Exts.P14 to P17 stay petitions before the said Tribunal. By Ext.P18 common order passed in the stay petitions, the 1st respondent Tribunal granted a conditional stay against the recovery of the tax disputed in all the cases till disposal of the appeals, subject to the condition that the petitioner remits half of the tax disputed in all the cases and furnishing security for the balance tax disputed within 30 days from the date of receipt of the order. The grievance of the petitioner in the writ petition is that although he was ready to comply with the directions in Ext.P18 to the extent it directed him to pay half of the tax disputed in all the cases, the respondents took a stand that, insofar as two of the cases were not concerned with the tax liability but with the liability of penalty, Ext.P18 order should be construed as referring to half of the penalty amounts confirmed against the petitioner in those two cases. It is aggrieved by the said findings of the respondents that the petitioner approached this Court for a clarification as to the contents in Ext.P18 order.

2. I have heard Sri.Jose Antony, 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 in Ext.P18 order, the 1st respondent Tribunal has essentially considered the stay petitions filed in four appeals, two of which pertain to assessments completed against the petitioner and two of which pertain to penalty amounts confirmed against the petitioner. In that view of the matter, normally, the 1st respondent tribunal would have been expected to specify the amounts, out of the total amounts confirmed against the petitioner in the orders impugned in the appeals, that the petitioner had to pay, as a condition for the grant of stay. In Ext.P18 order,

however, the 1st respondent tribunal has specified that only half of the tax disputed in the various cases should be deposited. Obviously, the said direction can relate only to the two appeals filed by the petitioner, against the assessment orders which confirmed a tax liability on the petitioner. In other words, Ext.P18 order cannot be read as having given any directions, with regard to the deposit of any amount out of the penalty amounts that were confirmed against the petitioner. That apart, I also note that Ext.P18 is not an order that contains any reasons for directing the petitioner to remit the amounts specified therein. While this Court would, under normal circumstances, have quashed Ext.P18 order, and directed the 1st respondent Tribunal to reconsider the matter and pass a speaking order giving reasons as to why the petitioner is called upon to deposit the amounts, directed to be deposited by the tribunal, as a condition for the grant of stay, in this particular case, considering the fact that the petitioner is ready to pay the tax amounts directed to be paid in Ext.P18 order, I feel that the tribunal should be directed to consider and pass orders in the appeals itself after affording the petitioner an opportunity of being heard. Accordingly, I quash Ext.P18 and direct the 1st respondent tribunal to consider and pass orders in the appeals, namely, KVAT Appeal Nos.35 36, 37 and 38/2015 filed by the petitioner before it, within a period of two months from the date of receipt of a copy of this judgment subject to the condition that the petitioner pays 50% of the tax amounts confirmed against the petitioner by Exts.P1 and P4 assessment orders. It is made clear that in considering the requirement of paying 50% of the tax amounts confirmed against the petitioner by Exts.P1 and P4 assessment orders, the 1st respondent Tribunal shall also take into account the amounts, if any, paid by the petitioner towards the said tax amounts before the first appellate authority.

The writ petition is disposed with the above directions.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp