IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 4205 of 2015 (A)

PETITIONER:

M/S.ALMARK HOUSING COMPNAY PVT. LTD.,
VTH FLOOR, CC 28/925 G, SANTHI EMERALD,
CHERUPARAMBATH ROAD, KADAVANTHARA,
COCHIN,
REPRESENTED BY ITS MANAGING DIRECTOR
MR VINOD K K.

BY ADV. SMT.K.LATHA

RESPONDENT(S):

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1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO THE GOVT. OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. ASSISTANT COMMISSIONER (WORKS CONTRACT),
COMMERCIAL TAXES, ERNAKULAM - 682 035.

3. THE DEPUTY COMMISSIONER(APPEALS)- II,
COMMERCIAL TAXES, ERNAKULAM - 682 035.

4. INSPECTING ASST. COMMISSIONER
(REVENUE RECOVERY OFFICER),
COMMERCIAL TAXES, KAKKANAD, ERNAKULAM - 682 030.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 4205 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1:- THE TRUE COPY OF ASSESSMENT ORDER NO.320720 86034/2009-2010 DATED 31/10/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

P2:- THE TRUE COPY OF THE APPEAL IN FORM 29 AND GROUNDS OF APPEAL FILED BY THE PETITIONER AGAINST THE P1 ASSESSMENT ORDER FOR THE YEAR 2009-2010.

P3:- THE TRUE COPY OF THE REVENUE RECOVERY NOTICE FOR THE YEAR 2009-2010 IN FORM NO.1 DATED 17/12/2014 BASED ON THE P1 ASSESSMENT ORDER ISSUE BY THE FOURTH RESPONDENT TO THE PETITIONER.

P4:- THE TRUE COPY OF THE STAY ORDER NO KVATA 3292/2014 DATED 13/1/2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.4205 of 2015

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Dated this the 10th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 order of the 3rd respondent, whereby the 3rd respondent, while considering the stay petition preferred in an appeal filed by the petitioner against an order of assessment under the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act'), directed the petitioner to pay 30% of the outstanding demand in the assessment order, as a condition for the grant of stay of recovery of the balance amounts confirmed against the petitioner. In the writ petition, the petitioner would contend that Ext.P4 order suffers from a non-application of mind, and that the condition imposed in Ext.P4 order is without any discussion as to the merits of the case. I have gone through Ext.P4 order and I find that the 3rd respondent has considered the prima facie case of the petitioner on merits, and after a discussion on the merits of the contentions in the appeal, has found that the petitioner would be liable to pay 30% of the outstanding demand as a condition for the grant of stay. I do not see any reason to interfere with the order passed by the 3rd respondent, in exercise of the discretion vested in him under the KVAT Act.

Resultantly, the writ petition in its challenge against Ext.P4 order fails and is accordingly dismissed.

The learned counsel for the petitioner would submit that the period of 15 days that was granted in Ext.P4 order for complying with the conditions thereunder has already expired. Taking note of the said submission, I grant the petitioner time up to 15.03.2015, for complying with the directions of the 3rd respondent in Ext.P4 order.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/