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. 4577 of 2015 (V)

PETITIONER:

M/S.ELITE ASSOCIATES, DOOR NO.40/9262,
MAYUR BUSINESS CENTRE,
3RD FLOOR CHITTOOR ROAD,
PULLEPADY JUNCTION, ERNAKULAM - 682 035,
REPRESENTED BY ITS PROPRIETOR
JIMMY ELIAS, AGED 56 YEARS.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENT(S):
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1. ASSISTANT COMMISSIONER, COMMERCIAL TAX,
   ERNAKULAM, KOCHI- 682 039.

2. COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES,
   OFFICE OF THE COMMERCIAL TAX OFFICER,
   2ND CIRCLE ERNAKULAM - 682 018.

3. DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, ERNAKULAM - 682 031.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

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

mbr/

WP(C).No. 4577 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1- **TRUE COPY OF THE RETURN SUBMITTED IN FORM NO.10 UNDER RULE 22(1) OF THE KERALA VALUE ADDED TAX RULE.**

P2- **TRUE COPY OF THE NOTICE DATED 1.10.2014 ISSUED BY THE RESPONDENT.**

P3- **PHOTOSTAT COPY OF THE STATEMENT OF OBJECTIONS SUBMITTED BY THE PETITIONER DATED 6.11.2014.**

P4- **PHOTOSTAT COPY OF THE ORDER NO. 32071664287/2012-13 DATED 30.10.2014 PASSED BY THE 2ND RESPONDENT.**

P5- **TRUE COPY OF THE FIR DATED 9.1.2015 IN CRIME NO.42/15 OF CENTRAL POLICE STATION ERNAKULAM.**

P6- **PHOTOSTAT COPY OF THE APPEAL DATED 15.12.2014.**

P7- **TRUE COPY OF THE PROCEEDINGS OF THE APPELLATE AUTHORITY IN ORDER NO.KVATA - 3385/14 DATED 29.12.2014.**

P8- **PHOTOSTAT COPY OF THE NOTICE DATED 7.1.2015 ISSUED BY AUTHORIZED OFFICER INSPECTING ASSISTANT COMMISSIONER (IN CHARGE) COMMERCIAL TAXES ERNAKULAM.**

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.4577 of 2015

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Dated this the 12th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 conditional order of stay passed by the 3rd respondent, in a stay application filed along with an appeal against Ext.P4 assessment order. It is the case of the petitioner in the writ petition that, while imposing the conditions in Ext.P7 order, the appellate authority had not considered the submissions of the petitioner in their true legal perspective and had thus passed a mechanical order without application of mind and without exercising his discretion validly.

2. I have heard Sri.Sunil Nair Palakkat, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, 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 this is a case where, notwithstanding that a pre-assessment notice was served on the petitioner, the petitioner did not file a reply to the

said notice or appear before the Assessing Officer within the time granted in Ext.P2 notice. Under those circumstances, the Assessing Officer was constrained to pass Ext.P4 ex parte order confirming a demand of differential tax on the petitioner. While the petitioner has raised various contentions against Ext.P4 assessment order in the appeals preferred by him before the 3rd respondent, the 3rd respondent has dealt with the contentions of the petitioner on merits in Ext.P7 stay order passed by him. Inasmuch as the 3rd respondent has cited reasons for his decision in Ext.P7 order, I am not inclined to interfere with the said order in proceedings under Article 226 Constitution of India.

4. Resultantly, the writ petition in its challenge against Ext.P7 order fails and is accordingly dismissed.

Counsel for the petitioner would submit that the time granted in Ext.P7 order to comply with conditions has already expired. Taking note of the said submission, I make it clear that if the petitioner complies with the conditions in Ext.P7 order, on or before 10.03.2015, the 3rd respondent shall treat the said compliance as compliance with Ext.P7 order, and proceed to hear the appeals preferred by the petitioner in due course. It is made clear that coercive action for recovery of the amounts confirmed against the petitioner by the assessment order shall be kept in abeyance till 10.03.2015.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/