IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 4664 of 2015 (G)

PETITIONER(S):

M/S. ROTANA INNS PVT. LTD,
(HOTEL RAJ RESIDENCY) KALLUVATHUKKAL, KOLLAM
PIN 691578, REPRESENTED BY ITS MANGING DIRECTOR
D.THYAGARAJAN

BY ADVS.SRI.P.G.JAYASHANKAR
SMT.V.VIJITHA

RESPONDENT(S):
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1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT
GOVERNMENT SECRETARIAT, TRIVANDRUM 695001.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWERS, THIRUVANANTHAPURAM, PIN 695002.

3. THE ASSISTANT COMMISSIONER
COMMERCIAL TAXES, SPECIAL CIRCLE, ASRAMAM
KOLAM, PIN 691002.

4. THE DEPUTY TAHSILDAR (REVENUE RECOVERY)
TALUK OFFICE, KOLLAM, PIN 691001.

5. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, ASRAMOM, KOLLAM, PIN 691002.

6. KERALA AGRICULTURAL INCOME TAX AND
SALES TAX APPELLANTE TRIBUNAL
ADDITIONAL BENCH, THRIUVANANTHPURAM 695010,
REPRESENTED BY ITS ASSISTANT SECRETARY.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PJ

WP(C).No. 4664 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE ANNUAL RETURN IN FORM 10 DATED 28.06.2010

P2: TRUE COPY OF THE PENALTY ORDER NO. CR. 16/2009-10 DATED 23.07.2010

P3: TRUE COPY OF THE ORDER IN IA.NO.524/2011 DATED 11.11.2013 (STA 7678 OF 2010)

P4: TRUE COPY OF THE APPEAL MEMORANDUM IN TA. 49/14 PENDING BEFORE THE 6TH RESPONDENT

P5: TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2009-10 DATED 31.01.2014

P6: TRUE COPY OF THE APPEAL MEMORANDUM DATED 19.04.2014 PREFERRED BEFORE THE 5TH RESPONDENT

P7: TRUE COPY OF THE STAY PETITION DATED 19.04.2014 PREFERRED BEFORE THE 5TH RESPONDENT

P8: TRUE COPY OF THE FORM 1 DEMAND NOTICE U/S. 7 DATED 22.09.2014

P9: TRUE COPY OF THE FORM 10 DEMAND NOTICE U/S. 34 DATED 22.09.2014

P10: TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2008-09 DATED 31.01.2014

P11: TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2010-11 DATED 31.01.2014

P12: TRUE COPY OF THE ORDER NO.STA (KLM) 447/14 DATED 02.02.2015 PASSED BY THE 5TH RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4664 OF 2015 (G)

Dated this the 13th day of February, 2015

J U D G M E N T

The petitioner, who is an assessee with the Sales Tax Department, challenges Ext.P12 order of conditional stay issued by the 5th respondent in an appeal against the assessment order for the year 2009-10. In Ext.P12 order, the 5th respondent, after considering the objections of the petitioner with regard to the estimation done by the assessing authority, who adopted an average gross profit of 224% in the executive bar counter and 87.4% in the local bar counter, found that the assessing authority had arrived at the said figures of gross profit after verification of the copies of the sale bills that had been recovered during the time of inspection of the premises. I note however that against similar assessment orders passed for the years 2008-09 and 2010-11, the gross profit was finally determined, pursuant to adjudication proceedings, at only 60% as against the initial proposal for fixing the gross profit at the levels which were fixed for the assessment year 2009-10. In my view, the fate of the earlier assessments completed by the assessing authority, at the hands of the appellate authority, is an aspect that has to be considered by the 5th respondent while determining whether the assessee has a prima facie case for the grant of a stay, in an appeal against an assessment order for the assessment year in question. Insofar as this is not seen considered by the 5th respondent in Ext.P12 order, I quash the same and direct the 5th respondent to reconsider the said petition after taking into account the final assessments done in respect of the petitioner for the assessment years 2008-09 and 2010-11, after hearing the petitioner. The 5th respondent shall pass fresh orders, as directed above, within a period of two months from the date of receipt of copy of this judgment. It is made clear that recovery action, for recovery of any amounts confirmed against the petitioner by Ext.P5 assessment order, shall be kept in abeyance till such time as orders are passed by the 5th respondent as directed in this judgment, and communicated to the petitioner.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp