IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 5406 of 2015 (A)

PETITIONER(S):

SUNRISE INSTITUTE OF MEDICAL SCIENCE (P) LTD.
SEAPORT AIRPORT ROAD, MAVELIPURAM,
KAKKANAD, KOCHI-682 030.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR
SRI.K.UMAMAHESWAR

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER, 2ND CIRCLE,
KALAMASSERY AT CIVIL STATION, KAKKNAD, KOCHI-682 030.

2.THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM, KOCHI - 682 015.

3.THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES,
MATTANCHERRY, PIN - 682 005.

R BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR.S.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.5406/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER DATED 3.8.2013 ISSUED BY THE 3RD RESPONDENT UNDER SECTION 74 OF THE ACT.

EXT.P2: COPY OF NOTICE DATED 2.7.2014 ISSUED BY THE 1ST RESPONDENT.

EXT.P3: COPY OF REPLY DATED 5.8.2014.

EXT.P4: COPY OF ASSESSMENT ORDER DATED 12.8.2014 FOR THE YEAR 2012-13 ISSUED BY THE 1ST RESPONDENT.

EXT.P5: COPY OF APPEAL MEMORANDUM AGAINST EXT.P4.

EXT.P6: COPY OF PETITION FOR STAY FILED IN EXT.P5.

EXT.P7: COPY OF STAY ORDER DATED 14.10.2014.

EXT.P8: COPY OF JUDGMENT DATED 4.11.2014 IN W.P.(C).NO.28590/2014.

EXT.P9: COPY OF ORDER DATED 31.01.2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5406 OF 2015 (A)

Dated this the 20th day of February, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P9 conditional order of stay passed by the 2nd respondent in an appeal preferred by the petitioner against Ext.P4 assessment order under the Kerala Value Added Tax Act for the assessment year 2012-13. It is the contention of the petitioner in the writ petition that despite the specific directions given in Ext.P8 judgment of this Court, the 2nd respondent has not considered the aspect of a prima facie case with reference to the facts stated in the assessment order, and has proceeded to mechanically direct a payment of Rs.12,00,000/- as a condition for grant of recovery of balance amounts confirmed against the petitioner in the assessment order.

2. I have heard Sri.S.Anil Kumar, the learned counsel appearing for the petitioner as also Sri.Sudheesh Kumar, 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 find that in Ext.P9 order, the 2nd respondent has dealt with the various contentions of the petitioner, and has found that inasmuch as the petitioner had compounded an offence involving an incorrect submission of returns, where certain sales of implants had not been included in the taxable turnover of sales, an estimation of the suppressed turnover to that extent was validly done by the assessing authority. The 2nd respondent thereafter considered the contentions of the petitioner with regard to other consumable items, which were transferred to patients in the course of treatment, and the possibility of the said items being excluded from the value of taxable turnover. It was thereafter that the 2nd respondent came to the finding that a prima facie case for grant of a conditional stay had been made out by the petitioner and directed the deposit of Rs.12,00,000/- as a condition for the grant of stay. On a consideration of the findings of the 2nd respondent, I do not think that the said findings can be interfered with in these proceedings under Article 226 of the Constitution of India. Resultantly, the writ petition, in its challenge against Ext.P9 order fails, and is accordingly dismissed.

Counsel for the petitioner would submit that by Ext.P9 order, he has been granted only 15 days time to deposit the amount of Rs.12,00,000/-. Taking note of the plea of financial hardship urged on behalf of the petitioner, I grant the petitioner time till 6.3.2015 for complying with the directions in Ext.P9 order. Save for this modification, Ext.P9 order is not otherwise interfered with.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp