

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No.7255 of 2015 (F)

PETITIONER:

**M/S.WEST FORT HI-TECH HOSPITAL LTD.
POONKUNNAM,THRISSUR,
REPRESENTED BY ITS MANAGING DIRECTOR,
K.K.MOHANDAS**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON**

RESPONDENTS:

- 1. THE COMMERCIAL TAX OFFICER,
3RD CIRCLE,THRISSUR-680 001.**
- 2. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)
DEPARTMENT OF COMMERCIAL TAXES (APPEALS),
THRISSUR-680 001**
- 3. COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPRUAM-695 001.**

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

WP(C).No.7255 of 2015 (F)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF RETURN FILED BY THE PETITIONER FOR THE PERIOD
2012-2013.

EXT.P.2: COPY OF STATEMENT OF PROFIT & LOSS ACCOUNTS OF THE
PETITIONER.

EXT.P.3: COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.

EXT.P.4: COPY OF REPLY FILED BY THE PETITIONER.

EXT.P.5: COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.

EXT.P.6: COPY OF REPLY SUBMITTED BY THE PETITIONER BEFORE THE 1ST
RESPONDENT WITH LEDGER ACCOUNT AND SOME SAMPLE COPIES OF
BILLS.

EXT.P.7: COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.

EXT.P.8: COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND
RESPONDENT.

EXT.P.9: COPY OF STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND
RESPONDENT.

EXT.P.10: COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7255 OF 2015 (F)

Dated this the 9th day of March, 2015

J U D G M E N T

Challenge in the writ petition is against Ext.P10 conditional order of stay passed by the 2nd respondent in an appeal preferred by the petitioner against Ext.P7 assessment order. The contentions of the petitioner in the writ petition is that while passing Ext.P10 order, the 2nd respondent Appellate authority has not gone into the merits of the case of the petitioner and further did not take into account the material that was produced by the petitioner for substantiating his case on merits.

2. I have heard the learned counsel appearing for the petitioner as also 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.P10 order, the 2nd respondent has gone into the contentions of the

petitioner and found that there was a prima facie case made out by the petitioner with regard to certain amounts that were confirmed against him in the assessment order. On the question of quantification, however, it was found that the petitioner had produced only certain bills, and an exact quantification as regards the amounts that would be excluded from the assessment against the petitioner, was not possible at that stage in the absence of the entire bills. It was under these circumstances that the 2nd respondent confined the grant of stay, subject to the condition that the petitioner pays 30% of the total amount confirmed against him by Ext.P7 order, as a condition for grant of stay of recovery of the balance amount. On a consideration of the findings of the 2nd respondent in the stay order, I am of the view that the said order of the 2nd respondent cannot be said to be one passed mechanically, and without any application of mind, or through an erroneous exercise of the discretion vested in the said authority. I therefore, do not see any reason to interfere with Ext.P10 order of the 2nd respondent. The writ petition, in its challenge against the said order fails, and is accordingly dismissed.

Counsel for the petitioner would seek some time to comply with the directions in Ext.P10 order. Taking into account the liquidity

problem urged on behalf of the petitioner, I permit the petitioner to comply with the directions in Ext.P10 order on or before 31.3.2015. Save for this limited modification, the writ petition, in its challenge against Ext.P10 order, is otherwise dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp