IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 7523 of 2015 (M)

PETITIONER :

SAM THOMAS
AYANIMOOTTIL CEMENTS,
KUTTIVATTOM, KARUNAGAPPALLY
KOLLAM DISTRICT.

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

RESPONDENT(S) :
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1. **THE ASSISTANT COMMISSIONER (ASSESSMENT)**
   COMMERCIAL TAXES, SPECIAL CIRCLE, ASRAMOM
   KOLLAM-691 002.

2. **THE DEPUTY COMMISSIONER (APPEALS)**
   COMMERCIAL TAXES, ASRAMOM, KOLLAM-691 002.

3. **THE TAHSILDAR**
   KARUNAGAPPALLY
   KOLLAM DISTRICT-691 005.

R1 TO R3 BY SR. GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 7523 of 2015 (M)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1.	COPY OF TRADING AND PROFIT AND LOSS ACCOUNT FOR 2009-10.
EXT.P1(a).	COPY OF TRADING AND PROFIT AND LOSS ACCOUNT FOR 2010-11.
EXT.P2.	COPY OF ASSESSMENT ORDER DATED 13/3/2013 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2009-2010.
EXT.P2(a).	COPY OF ASSESSMENT ORDER DATED 13/3/2013 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2010-2011.
EXT.P3.	COPY OF APPEAL MEMORANDUM AGAINST EXT.P2.
EXT.P3(a).	COPY OF APPEAL MEMORANDUM AGAINST EXT.P2(a).
EXT.P4.	COPY OF STAY PETITION FILED ALONG WITH EXT.P3 APPEAL.
EXT.P4(a).	COPY OF STAY PETITION FILED ALONG WITH EXT.P3(a) APPEAL.
EXT.P5.	COPY OF STAY ORDER DATED 18/2/2015 ISSUED BY THE 2ND RESPONDENT.
EXT.P6.	COPY OF NOTICE DATED 2/2/2015 ISSUED BY THE 3RD RESPONDENT UNDER THE RR ACT FOR THE YEAR 2009-2010.
EXT.P6(a).	COPY OF THE NOTICE DATED 2/2/2015 ISSUED BY THE 3RD RESPONDENT UNDER THE RR ACT FOR THE YEAR 2010-2011.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 7523 of 2015

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Dated this the 10th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 conditional order of stay, passed by the 2nd respondent in appeals preferred by the petitioner challenging the orders of assessment under the Kerala Value Added Tax Act, hereinafter referred to as the 'KVAT Act', for the assessment years 2009-2010 and 2010-2011. The challenge against Ext.P5 in the writ petition is essentially that, the 2nd respondent did not exercise the discretion validly while passing the said order. The petitioner would contend that, although he had raised various contentions in the appeal and the stay petition filed before the 2nd respondent, the 2nd respondent has merely recorded the submissions of the petitioner, but thereafter, mechanically directed the payment of 35% of the balance tax and interest demanded as a condition for the grant of stay and recovery of the balance amount.

2. I have heard Sri.S.Anil Kumar, the learned counsel appearing for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in Ext.P5 order, after referring to the contentions of the petitioner, the 2nd respondent finds that the assessing authority had, on verification of the trading account, found that the appellant had sold the cement at a price below the purchase cost of the goods. He was, therefore, of the opinion that Explanation VII to Section 2 (iii) of the KVAT Act, would be attracted. It was thereafter, that he found that, there were some contentions of the petitioner that would entitle him for a conditional stay.

4. The learned counsel for the petitioner would submit that if his contentions on merit are accepted, then there will be no justification for the imposition of any condition and the 2nd respondent ought to have granted a complete stay against the demand of tax, pending consideration of the appeal. I am of the view, however, that there is a prima facie consideration of the merits of the case by the 2nd respondent. On the facts of the case, however, I feel that the condition imposed by the 2nd respondent is slightly onerous, when considering the prima facie case made out by the petitioner. I, therefore, modify the condition such that the

petitioner needs remit only 25% of the amount confirmed against him by the assessment orders in question, as a condition for the stay of recovery of the balance tax and interest demanded in the assessment orders. I also make it clear that if the petitioner deposits 25% of the tax and interest demanded for the assessment years 2009-2010 and 2010-2011 before the 2nd respondent on or before 31.03.2015, and complies with the other conditions in Ext.P5 order, then the same shall be treated as compliance with Ext.P5 order of the 2nd respondent. Save for this limited modification, the writ petition, in its challenge against Ext.P5 order, is otherwise dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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