IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 8563 of 2015 (U)

PETITIONER(S):

M/S.LAND N ROCK EQUIPMENTS
EDAPPALLY, KOCHI, REPRESENTED BY ITS MANAGING PARTNER,
JOSEPH KURIAN.

BY ADV. SRI.AJI V.DEV

RESPONDENT(S):
----

1. ASSISTANT COMMISSIONER [APPEALS]
COMMERCIAL TAXES, ERNAKULAM - 682015.

2.THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, 2ND CIRCLE, KALAMASSERY 682 024.

3.INSPECTING ASST. COMMISSION,
COMMERCIAL TAXES, ERNAKULAM - 682 015.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.8563/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ASSESSMENT ORDER PASSED FOR THE YEAR 2013-14 DATED 7.1.2015.

EXT.P2: COPY OF THE TRANSPORTATION DOCUMENT DATED 31.8.2013 EVIDENCING ENTRY AND RETURN OF THE EXCAVATOR [ALONG WITH ITS 5 ANNEXURES].

EXT.P3: A SEPARATE SHEET CONTAINING THE DETAILS OF INTERSTATE PURCHASES COVERING RS.50,13,200.00.

EXT.P4: A SEPARATE SHEET CONTAINING THE DETAILS OF PURCHASES COVERING RS.12,12,510.00 IN DISPUTE.

EXT.P5: A SEPARAT SHEET CONTAINING THE DETAILS OF PURCHASES COVERING RS.3,05,400.00 IN DISPUTE.

EXT.P6: COPY OF THE STATUTORY APPEAL FILED ALONG WITH PETITION FOR STAY OF COLLECTIOIN OF TAX FOR THE YEAR 2013-14 DATED 9.2.2015.

EXT.P7: COPY OF THE INTERLOCUTORY ORDER ISSUED BY THE 1ST RESPONDENT GRANTING CONDITIONAL STAY DATED 24.2.2015.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.8563 OF 2015 (U)

Dated this the 18th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P7 conditional order of stay passed by the 1st respondent, in a stay petition filed along with the appeal against Ext.P1 assessment order for the assessment year 2013-14 under the Kerala Value Added Tax Act. The contention of the petitioner in the writ petition is that, in Ext.P7 order passed by the 1st respondent, the 1st respondent has not exercised his discretion validly while passing the said order.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P7 order, the 1st respondent has given reasons for arriving at a prima facie finding with regard to the merits of the petitioner's case in the appeal.

It was after a prima facie consideration of the case on merits, that he found that the petitioner would be required to remit 30% of the outstanding demand as a condition for grant of stay of recovery of balance amounts. I do not find any irregularlity or illegality in the exercise of discretion by the 1st respondent while passing Ext.P7 order. Resultantly, the writ petiton, in its challenge against Ext.P7 order, fails, and is accordingly, dismissed.

Counsel for the petitioner seeks some time to comply with the directions in Ext.P7 order. Taking note of the plea of financial hardship urged on behalf of the petitioner, I grant the petitioner time till 20.4.2015 for complying with the directions in Ext.P7 order. Save for this limited modification, the writ petition, in its challenge aginst Ext.P7 order, is otherwise dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp