IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 9157 of 2015 (T)

PETITIONER(S):

M/S.ROYAL HOSPITAL,
KUNNAMKULAM, THRISSUR DISTRICT,
REPRESENTED BY ITS PROPRIETOR,
DR.THOMAS MATHEW.

BY ADVS.SRI.HUSSAIN KOYA VALIYAVEEDAKATH,
SRI.K.ANAND,
SRI.K.V.RAJENDRAN (WANDOOR).

RESPONDENTS:-
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1. **THE STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM - 695 001.

2. **THE COMMERCIAL TAX OFFICER,**
   OFFICE OF THE COMMERCIAL TAX OFFICE,
   KUNNAMKULAM - 680 503.

3. **THE DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, ERNAKULAM - 682 018.

4. **THE COLLECTOR/AUTHORIZED OFFICER,**
   INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, COMMERCIAL TAX COMPLEX,
   POOTHOLE, THRISSUR - 680 001.

BY GOVT. PLEADER SMT.LILLY. K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 9157 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1.	TRUE COPY OF THE NOTICE NO:32081260904/2009-10 DATED 29.11.2014 UNDER SECTION 25(1) OF THE KVAT ACT 2003.
EXHIBIT P1(A).	TRUE COPY OF THE NOTICE NO:32081260904/2011-12 DATED 14.11.2014 UNDER SECTION 25(1) OF THE KVAT ACT 2003.
EXHIBIT P2.	TRUE COPY OF THE REPLY SUBMITTED BEFORE THE COMMERCIAL TAX OFFICER, KUNNAMKULAM.
EXHIBIT P3.	TRUE COPY OF THE ORDER NO.32081260904/2009-10 DATED 24.12.2014 OF THE COMMERCIAL TAX OFFICER, KUNNAMKULAM.
EXHIBIT P3(A).	TRUE COPY OF THE ORDER NO.32081260904/11/12 DATED 05.01.2015 OF THE COMMERCIAL TAX OFFICER, KUNNAMKULAM.
EXHIBIT P4.	TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 DATED 26.02.2015.
EXHIBIT P5.	TRUE COPY OF THE ORDER NO:KVAT - 422/15 AND 493/15 DATED 03.03.2015 OF THE 3RD RESPONDENT.
EXHIBIT P6.	TRUE COPY OF THE INTERIM ORDER OF WA NO:1971/2012 DATED 25/06/2015.
EXHIBIT P6(A).	TRUE COPY OF THE INTERIM ORDER OF WA NO:1971/2012 DATED 18/10/2013.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.9157 of 2015 (T)

...

Dated this the 24th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 conditional order of stay passed by the 3rd respondent in stay petitions filed along with appeals against Exts.P3 and P3(a) orders of assessment.

2. The issue involved in the appeals is with regard to the taxability of the turnover of medicines and other materials, that have been transferred by the assessee hospital to patients, in the course of treatment. The 3rd respondent appellate authority, while considering the stay petitions found that, the petitioner had made out a prima facie case on merits for grant of a conditional stay of recovery of the amounts confirmed against him, and directed the petitioner to pay 30% of the outstanding demand in Exts.P3 and P3(a), as a condition for the stay of recovery of the balance demand therein, pending disposal of the appeals. In the writ petition Ext.P5 order of the 3rd respondent is challenged on the ground that, the 3rd respondent while passing the said order has not exercised his discretion validly.

3. I have heard Sri.Hussain Koya Valiyaveedakath, the learned counsel appearing for the petitioner and Smt.Lilly K.T., the

learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that, in Ext.P5 order, the 3rd respondent has considered the submissions of the petitioner with regard to the indivisibility of the transaction, and that the transaction is primarily a service transaction and the supply of goods is only incidental. It is, thereafter, that the 3rd respondent found that, a detailed consideration of the matter was possible only at the stage of final hearing of the appeals and the petitioner was entitled only to a conditional order of stay pending disposal of the appeals. Ext.P5 order, insofar as it contains reasons for the decision of the 3rd respondent, cannot be said to be illegal or one that is vitiated by a non-application of mind. However, I find that the issue with regard to taxability, of the turnover relating to supply of goods by hospitals to patients during the course of treatment, is not one that is free from doubt, and is pending consideration before various forums. Under the said circumstances, I feel that the ends of justice would be met by requiring the petitioner to pay 20% of the outstanding demand in Exts.P3 and P3(a), instead of 30% of the outstanding amount, as ordered by the 3rd respondent in Ext.P5 order. Resultantly, the writ petition is disposed by directing that, if the petitioner pays 20% of the outstanding

demand in Exts.P3 and P3(a) orders, on or before 10.04.2015, and furnishes a simple bond in Form-6A for the balance amounts, then, the said payments shall be treated as sufficient compliance with Ext.P5 order passed by the 3rd respondent. The 3rd respondent shall thereafter proceed to dispose the appeals preferred by the petitioner on merits, after hearing the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/25/03/