IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 10333 of 2015 (N)

PETITIONER(S):

M/S. SAID & CO. ASSOCIATES,
NEAR A.U.P. SCHOOL, PILASSERY,
KUNNAMANGALAM, KOZHIKODE, REPRESENTED
BY ITS PROPRIETOR, MOHAMMED IQBAL.

BY ADVS.SRI.A.V.MURALIDHARAN
SRI.C.AJITH KUMAR

RESPONDENT(S):

1.STATE OF KERALA, REPRESENTED BY SECRETARY
TO GOVERNMENT, REVENUE DEPARTMENT,
THIRUVANANTHAPURAM PIN: 695 001.

2.THE INTELLIGENT OFFICE, SQUAD NO.II,
COMMERCIAL TAXES, KOZHIKODE PIN 673 001.

3.THE DEPUTY COMMISSIONER, COMMERCIAL TAXES,
KOZHIKODE PIN 673 001.

4.THE SALES TAX OFFICER, (RECOVERY), DEPARTMENT
OF COMMERCIAL TAXES, KOZHIKODE PIN: 673 001.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.10333/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PENALTY ORDER DATED 9.1.2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P2: COPY OF THE REVISION DATED 28.2.2015 FILED BY THE PETITIONER AGAINST EXT.P1 ORDER BEFORE THE 3RD RESPONDENT.

EXT.P3: COPY OF THE PETITION FOR STAY DATED 28.2.2015.

EXT.P4: COPY OF THE ORDER DATED 10.3.2015 PASSED BY THE 3RD RESPONDENT ON EXT.P3 STAY PETITION.

EXT.P5: COPY OF THE DEMAND NOTICE DATED 18.3.2015 ISSUED BY THE 4TH RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10333 OF 2015 (N)

Dated this the 30th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P4 conditional order of stay that was passed in a stay petition filed along with the revision petition challenging Ext.P1 order of penalty. Challenge in the writ petition against Ext.P4 is that the 3rd respondent while passing Ext.P4 order did not exercise his discretion validly.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader 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.P4, the 3rd respondent has given reasons for granting only a conditional stay to the petitioner. It is stated that the claim for concessional rate of tax against interstate sales was not accepted by the original authority for want of production of C Forms. It is not in dispute that C Forms were not produced by the petitioner within the time prescribed. In

that view of the matter, the 3rd respondent found that the penalty imposed on the petitioner was prima facie sustainable. He however took into account the submission of counsel for the petitioner that the C Forms can be produced if given some time for production of the same, and found that the petitioner needed to deposit only an amount of Rs.5,00,000/- and furnish security for the remaining balance amount, as a condition for the grant of stay of recovery of the penalty amounts confirmed against the petitioner by Ext.P1 order. On a perusal of Ext.P4 order, I do not see any error in jurisdiction or irregularity in the exercise of discretion by the 3rd respondent. Thus, I do not see any reason to interfere with Ext.P4 order in these proceedings under Article 226 of the Constitution of India. Resultantly, the writ petition, in its challenge against Ext.P4 order fails, and is accordingly dismissed.

Counsel for the petitioner would pray for some time to comply with the conditions in Ext.P4 order. Taking note of the said submission of counsel for the petitioner, as also the plea of financial hardship urged on behalf of the petitioner, I grant the petitioner time till 10.4.2015 for complying with the conditions in Ext.P4 order. Save for this limited modification, the writ petition, in its challenge against Ext.P4 order, is otherwise dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp