IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 10847 of 2015 (E)

PETITIONER(S):

M/S.THE MOBILE STORE LTD.,
M.G.ROAD, PALLIMUKKU,
ERNAKULAM - 682 016,
REPRESENTED BY ITS AUTHORIZED SIGNATORY, SHINE A.T.

BY ADVS.SRI.RAJESH NAMBIAR &
SRI.N.R.SAJ.

RESPONDENT(S):

1. COMMERCIAL TAX OFFICER,
   2ND CIRCLE, ERNAKULAM - 682 017.

2. ASSISTANT COMMISSIONER (APPEALS),
   O/O THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, ERNAKULAM- 682 017.

3. INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, ERNAKULAM - 682 017.

BY GOVERNMENT PLEADER SRI.BOBY JOHN PULIKKAPARAMBIL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT. P1: COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2006-07 DATED 13/03/2014.

EXT. P2: COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2007-08 DATED 15/03/2014.

EXT. P3: COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2011-12 DATED 18/08/2014.

EXT. P4: COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2012-13 DATED 18/08/2014.

EXT. P5: COPY OF THE COMMON STAY ORDER DATED 15/07/2014 GRANTING CONDITIONAL STAY OF RECOVERY OF AMOUNT DUE AS PER EXT.P1 AND P2 ASSESSMENT ORDERS.

EXT. P6: COPY OF THE COMMON STAY ORDER DATED 14/11/2014 GRANTING CONDITIONAL STAY OF RECOVERY OF AMOUNT DUE AS PER EXT. P3 AND P4 ASSESSMENT ORDERS.

EXT. P7: COPY OF THE LETTER EVIDENCING REMITTANCE OF THE AMOUNT AS DIRECTED IN EXT. P5.

EXT. P8: COPY OF THE LETTER EVIDENCING REMITTANCE OF AMOUNT PURSUANT TO EXT.P6 ORDER.

EXT. P9: COPY OF THE REVENUE RECOVERY NOTICE DATED 16/03/2015 FOR RECOVERY OF THE BALANCE AMOUNTS DUE AS PER EXT.P1 AND P2 ORDERS.

EXT. P10: COPY OF THE REVENUE RECOVERY NOTICE DATED 16/03/2015 FOR RECOVERY OF THE BALANCE AMOUNTS DUE AS PER EXT.P3 ORDER.

EXT. P11: COPY OF THE REVENUE RECOVERY NOTICE DATED 16/03/2015 FOR RECOVERY OF THE BALANCE AMOUNTS DUE AS PER EXT.P4 ORDER.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 10847 of 2015

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Dated this the 1st day of April, 2015

JUDGMENT

The petitioner, who is a dealer under the Kerala Value Added Tax Act, is aggrieved by the conditions imposed in Exts.P5 and P6 orders, that are passed by the 2nd respondent in a stay petition filed along with an appeal against assessment orders, that was passed against the petitioner. By Exts.P5 and P6 orders, the petitioner was directed to pay 30% of the outstanding demand, and to furnish adequate security to the satisfaction of the assessing authority for the balance amount, as a condition for grant of stay of recovery of the balance amount. It is the contention of the petitioner that, while he has complied with the condition of paying 30% of the outstanding demand, save to an extent of Rs.1,45,745/-, which amount they are disputing, the respondents are insisting on the petitioner furnishing a bank guarantee for the balance amount, as a condition of compliance with Exts.P5 and P6 orders. It is the submission of the petitioner that he will furnish a simple bond without surety for the balance amount, inasmuch as requiring him to furnish a bank guarantee, will be too onerous a condition and, further, will go against the spirit of Exts.P5 and P6 orders.

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 and the submissions made across the bar, I dispose the writ petition with the following directions:

(i) If the petitioner furnishes a simple bond without surety for the balance amount contemplated in Exts.P5 and P6 orders before the 1st respondent, together with payment of the amount of Rs.1,45,745/-, which is disputed by the petitioner, on or before 30.04.2015, then the same shall suffice as compliance with the directions of the 2nd respondent in Exts.P5 and P6 orders.

(ii) On the petitioner complying with the above condition as directed in this judgment, the 2nd respondent shall proceed to consider the appeal on merits within a period of two months thereafter, after hearing the petitioner.

(iii) Subject to the petitioner complying with the above conditions, the recovery steps for recovery of amounts confirmed against the petitioner by the assessment orders against which the appeals were filed, shall be kept in abeyance till such time as orders are passed by the 2nd respondent in the appeals filed by the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das