IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 11409 of 2015 (A)

PETITIONER(S):

M/S. K.R TOURIST HOME((HOTEL HILTON)
REPRESENTED BY ITS MANAGING PARTNER
D.RAJKUMAR, VARKALA, THIRUVANANTHAPURAM.

BY ADVS.SRI.A.SUDHI VASUDEVAN
SMT.K.PUSHPAVATHI
SRI.R.SYLESHWAREN NAIR

RESPONDENT(S):

1.INTELLIGENCE OFFICER
SQUAD NO.II, DEPARTMENT OF COMMERCIAL TAXES,
ATTINGAL, THIRUVANANTHAPURAM 695 020.

2.ASSISTANT COMMISSIONER - III (ASSESSMENT)
COMMERCIAL TAXES, SPECIAL CIRCLE,
KARAMANA, THIRUVANANTHAPURAM 695 001.

3.DEPUTY COMMISSIONER (APPEAL)
COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4.INTELLIGENCE OFFICER,
SQUAD NO.I, DEPARTMENT OF COMMERCIAL TAXES,
'C' BLOCK, REVENUE COMPLEX, THIRUVANANTHAPURAM 695 033.

5.COMMERCIAL TAX OFFICER,
ATTINGAL, THIRUVANANTHAPURAM 695 020.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.11409/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER DATED 30.5.2014 ISSUED BY THE INTELLIGENCE OFFICER SQUAD NO.II, COMMERCIAL TAXES, THIRUVANANTHAPURAM.

EXT.P2: COPY OF THE STAY ORDER DATED 31.10.2014 PASSED BY THE DEPUTY COMMISSIONER APPEAL THIRUVANANTHAPURAM.

EXT.P3: COPY OF THE RECEIPT DATED 6.12.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER EVIDENCING PAYMENT OF 30% OF THE DISPUTED.

EXT.P4: COPY OF THE SECURITY BOND EXECUTED BY THE PETITIONER ON 6.12.2014.

EXT.P5: COPY OF THE ASSESSMENT ORDER DATED 14.10.2014 PASSED BY THE 2ND RESPONDENT UNDER SECTION 19(1) OF THE KGST ACT.

EXT.P6: COPY OF THE DEMAND NOTICE DATED 14.10.2014 ISSUED BY THE 2ND RESPONDENT DEMANDING TURNOVER TAX FROM THE PETITIONER PURSUANT TO EXT.P5.

EXT.P7: COPY OF THE DEMAND NOTICE DATED 14.10.2014 ISSUED BY THE 2ND RESPONDENT DEMANDING PENALTY/PENAL INTEREST FROM THE PETITIONER PURSUANT TO EXT.P5.

EXT.P8: COPY OF THE APPEAL DATED 11.11.2014 PREFERRED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P9: COPY OF THE APPLICATION DATED 11.11.2014 FOR STAY OF THE RECOVERY OF TAX, INTEREST AND CESS DEMANDED PURSUANT TO EXT.P5.

EXT.P10: COPY OF THE JUDGMENT DATED 3.2.2015 IN W.P.(C).NO.4278/2014 PASSED BY THIS HON'BLE COURT.

EXT.P11: COPY OF ASSESSMENT ORDER DATED 14.10.2014 PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2012-13.

EXT.P12: COPY OF THE DEMAND NOTICE DATED 14.10.2014 ISSUED BY THE 2ND RESPONDENT DEMANDING TURNOVER TAX FROM THE PETITIONER.

EXT.P13: COPY OF THE DEMAND NOTICE DATED 14.10.2014 ISSUED BY THE 2ND RESPONDENT DEMANDING PENALTY/PENAL INTEREST FROM THE PETITIONER.

EXT.P14: COPY OF THE APPEAL DATED 11.11.2014 PREFERRED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P15: COPY OF THE APPLICATION DATED 11.11.2014 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT FOR STAY OF THE RECOVERY OF THE TAX, INTEREST AND CESS DEMANDED PURSUANT TO EXT.P11.

EXT.P16: COPY OF THE ORDER 22.12.2014 PASSED BY THE 3RD RESPONDENT.

EXT.P17: COPY OF THE JUDGMENT DATED 2.2.2015 IN W.P.(C).NO.3184/15.

EXT.P18: COPY OF THE ORDER DATED 11.3.2015 IN STA 48 & 49/14 PASSED BY THE 3RD RESPONDENT.

<u>RESPONDENTS EXHIBITS:</u> NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.11409 OF 2015 (A)

Dated this the 7th day of April, 2015

<u>J U D G M E N T</u>

The challenge in the writ petition is against Ext.P18 conditional order of stay passed by the 3rd respondent, in a stay petition filed along with appeals, against assessment orders under the KVAT Act for the assessment years 2011-12 and 2012-13. The challenge in the writ petition against Ext.P18 is that while passing Ext.P18 order, the 3rd respondent did not exercise his discretion validly.

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 as also the submissions made across the bar, I find that in Ext.P18 order, which itself was passed pursuant to Ext.P17 judgment of this Court, the 3rd respondent has gone into the aspect of a prima facie case that was argued on behalf of the petitioner, and it is after considering the submissions of counsel on merits that the 3rd respondent has imposed a condition of payment of 30% of the disputed amount confirmed against the petitioner by the assessment

orders, as a condition for the stay of recovery of the balance amounts confirmed against him by the said assessment orders. On a reading of Ext.P18 order, I do not find any illegality or irregularity in the passing of the said order by the 3rd respondent. Accordingly, I refrain from interfering with the said order in these proceedings under the Article 226 of the Constitution of India.

Counsel for the petitioner would submit that inasmuch as he has been asked to pay 30% of the amounts confirmed against him by the assessment orders for the assessment years 2011-12 and 2012-13, and the petitioner is currently facing financial hardship, he has to be given some more time to comply with the directions in Ext.P18 order. Taking note of the said submission of counsel for the petitioner, I extend the time for complying with the directions in Ext.P18 order till 11.5.2015. Save for this modification, the challenge in the writ petition against Ext.P18 order, is otherwise dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp