

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 12164 of 2015 (U)

PETITIONER(S):

**M.D.EASTHAPPAN INFRASTRUCTURES (P) LTD.
144, RAILWAY STATION NAGAR, ANGAMALY,
ERNAKULAM DISTRICT, REPRESENTED BY ITS
MANAGING DIRECTOR, SRI. M.D. ESTHAPPAN**

**BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER (WORKS CONTRACT)
MATTANCHERRY - 682 002**
- 2. THE ASSISTANT COMMISSIONER (APPEALS)
COMMERCIAL TAXES, THEVARA, ERNAKULAM, KOCHI - 682 015**

R BY GOVERNMENT PLEADER, SMT. SOBHA ANNAMMA EAPPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF ANNUAL RETURN FOR THE YEAR 2009-2010.
EXT.P1(a)	COPY OF ANNUAL RETURN FOR THE YEAR 2010-2011
EXT.P1(b)	COPY OF ANNUAL RETURN FOR THE YEAR 2011-2012
EXT.P2	COPY OF TRADING AND PROFIT AND LOSS ACCOUNT FOR THE YEAR 2009-2010
EXT.P2(a)	COPY OF TRADING AND PROFIT AND LOSS ACCOUNT FOR THE YEAR 2010-2011
EXT.P2(b)	COPY OF TRADING AND PROFIT AND LOSS ACCOUNT FOR THE YEAR 2011-2012
EXT.P3	COPY OF AUDIT REPORT (FORM 13 & 13A) FOR THE YEAR 2009-2010
EXT.P3(a)	COPY OF AUDIT REPORT (FORM 13 & 13A) FOR THE YEAR 2010-2011
EXT.P3(b)	COPY OF AUDIT REPORT (FORM 13 & 13A) FOR THE YEAR 2011-2012
EXT.P4	COPY OF ASSESSMENT ORDER DATED 29.11.2014 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2009-2010.
EXT.P4(a)	COPY OF ASSESSMENT ORDER DATED 22.12.2014 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2010-2011.
EXT.P4(b)	COPY OF ASSESSMENT ORDER DATED 20.01.2015 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2011-2012.
EXT.P5	COPY OF APPEAL MEMORANDUM AGAINST EXT.P4
EXT.P5(a)	COPY OF APPEAL MEMORANDUM AGAINST EXT.P4(a)
EXT.P5(b)	COPY OF APPEAL MEMORANDUM AGAINST EXT.P4(b)
EXT.P6	COPY OF STAY PETITION FILED IN EXT.P5 APPEAL
EXT.P6(a)	COPY OF STAY PETITION FILED IN EXT.P5(a) APPEAL
EXT.P6(b)	COPY OF STAY PETITION FILED IN EXT.P5(b) APPEAL

**EXT.P7 COPY OF STAY ORDER DATED 26.03.2015 ISSUED BY THE 2ND
RESPONDENT ON EXT.P6.**

**EXT.P7 (a) COPY OF STAY ORDER DATED 26.03.2015 ISSUED BY THE 2ND
RESPONDENT ON EXT.P6(a)**

**EXT.P7 (b) COPY OF STAY ORDER DATED 26.03.2015 ISSUED BY THE 2ND
RESPONDENT ON EXT.P6(b).**

RESPONDENT'S EXHIBITS:-

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 12164 of 2015

Dated this the 10th day of April, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 series of conditional orders of stay passed by the 2nd respondent in stay petitions filed along with appeals against assessment orders for the assessment years 2009-10 to 2011-12 under the KVAT Act. The challenge in the writ petition against Ext.P7 series of orders is essentially that while passing the said orders, the 2nd respondent had not exercised his jurisdiction validly.

2. I have heard the learned counsel appearing for the petitioner and 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 find that in Ext.P7 series of orders, the 2nd respondent has considered the contentions of the petitioner in the appeals, as also in the stay petitions, and has given reasons as to why the petitioner would be entitled only to a conditional order of stay. I do not find Ext.P7 series of orders to be vitiated by any non-application of mind or an erroneous exercise of jurisdiction. Under the said circumstances, I

am not inclined to interfere with those orders in these proceedings under Article 226 of the Constitution of India.

4. Counsel for the petitioner would submit that the petitioner is facing some financial hardship and he will require some time to comply with the directions in Ext.P7 series of orders. Taking note of the said submission of counsel for the petitioner, I extend the time, for complying with the directions in Ext.P7 series of orders, till 5th May, 2015. Thus, if the petitioner complies with the directions in Ext.P7 series of orders on or before 05.05.2015, the same shall be treated as valid compliance with Ext.P7 series of orders and the 2nd respondent shall proceed to hear and dispose the appeals on merits in due course.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE