IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WP(C).No. 13630 of 2015 (C)

PETITIONER(S):

MOHAMMED SHERIEF,
M/S. SHERIEF TIMBER, PALAKAZHY, ALANALLUR P.O.,
MANNARKKAD, PALAKKAD.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER, MANNARKKAD,
   678 582.

2. DEPUTY COMMISSIONER (APPEALS),
   DEPARTMENT OF COMMERCIAL TAXES, SALES TAX COMPLEX,
   KOTTAYAM 686 001.

3. INSPECTING ASST. COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES, SALES TAX COMPLEX,
   PALAKKAD 678 004.

BY GOVERNMENT PLEADER SRI.K.T.LILLY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 13630 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.

EXT.P2: COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P3: COPY OF STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P4: COPY OF ORDER PASSED BY THE PETITIONER 2ND RESPONDENT.

EXT.P5: COPY OF ORDER IN TA(VAT) NOS.1128/& 1268/13 OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL,PALAKKAD.

EXT.P6: COPY OF RETURN FILED BY THE PETITIONER BEFORE THE YEAR 2011-12.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.13630 of 2015

Dated this the 4th day of June, 2015

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

Aggrieved by Ext.P1 assessment order for the year 2011-12, the petitioner has filed Ext.P2 appeal and Ext.P3 stay petition before the 2nd respondent. As per Ext.P4 stay order, the petitioner has been directed to deposit 30% of the demand.

2. The learned counsel for the petitioner submits that, the assessment authority completed the assessment after rejecting C Forms for an amount of ₹37,20,478/- on the ground that, C Forms were not submitted in the due date. The tax amount, therefore, the petitioner has to be paid is ₹74,412/-. Though the appellate authority noted the legal provision that, even if C Form is produced belatedly before completion of the assessment, that can be relied on, not adverted to the same while considering the aspect of granting conditional stay. The only issue now remains before the appellate authority is rejection of C Forms for an amount of ₹37,20,478/-.

3. Admittedly, the petitioner is in possession of C Forms. In such circumstances, I am of the view that, imposition of conditional stay is erroneous. *Prima facie* it is not correct as especially the appellate authority did not advert to the factual aspect of possession of C Forms by the petitioner.

4. In that view of the matter, the conditional imposition as per Ext.P4 stay order is modified and the petitioner is given an absolute stay till disposal of appeal. The 2nd respondent is directed to dispose of the appeal within a period of four months from the date of receipt of a copy of this judgment, after hearing the petitioner.

This writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV