IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WP(C).No. 16759 of 2015 (T)

PETITIONER :

FAKEER MUHAMMED,PROPRIETOR,
M/S. SHOGUN AUTOLINES, NEAR KRISHNA ROAD,
PIRAYIRI POST, PALAKKAD.

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

RESPONDENT(S):
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1. **COMMERCIAL TAX OFFICER,**
   1ST CIRCLE, PALAKKAD-678 001.

2. **ASST. COMMISSIONER (APPEALS),**
   DEPARTMENT OF COMMERCIAL TAXES,
   PALAKKAD-678 001.

BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 16759 of 2015 (T)
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APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD. 16.5.2014.

P2 : COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 18.9.2014.

P3 : COPY OF STAY PETITION FILED BY THE PETITIONER DTD. 18.9.2014.

P4 : COPY OF ORDER ISSUED BY THE 2ND RESPONDENT, DTD. 20.12.2014.

P4(A): COPY OF JUDGMENT IN WPC NO.734/2015 OF THIS HON'BLE COURT DTD. 9.1.2015.

P5 : COPY OF PURCHASE LIST OF M/S. TRICHUR AUTO SPARES.

P5(A): COPY OF CONFIRMATION LETTER OF M/S. JK ENTERPRISES DTD. 9.12.2014.

P6 : COPY OF PURCHASE LIST UPLOADED BY THE PETITIONER.

P7 : COPY OF PURCHASE LIST UPLOADED BY THE PETITIONER.

P8 : COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD. 25.2.2015.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.16759 of 2015

Dated this the 5th day of June, 2015

J U D G M E N T

The petitioner impugns Ext.P8 order passed by the 2nd respondent in Ext.P3 stay application filed along with Ext.P2 appeal as against the assessment for the year 2013-14.

2. The case of the petitioner is that, the appellate authority, while passing the impugned order, did not advert to the merits of the petitioner's case. It is submitted that the order did not follow the directions of this Court in Ext.P4. It appears that, though order has been passed after adverting to the petitioner's case, petitioner's challenge regarding the non admissibility of the liability has not been adverted. It is further submitted that, the liability is passed on the petitioner for the reason that, the Accountant committed an error in noting the goods sold. In fact, the goods were sold to M/s. Thrissur Auto Spares, not to J.K.Enterprises. Only for this reason, the assessment has been made directing the petitioner to pay an amount of ₹4,76,856/-.

3. Heard the learned counsel for the petitioner as well as the learned Government Pleader for the respondents.

4. Considering the facts and circumstances of the case, I am of the view that, the appellate authority also, as rightly pointed out by learned counsel for the petitioner, has not adverted to the substantial challenge made by the petitioner. Nevertheless, merit

has to be appreciated while deciding the appeal and therefore, interest of justice demands that, for the stay, the petitioner shall deposit ₹75,000/-. In that view of the matter, the impugned order is modified. The petitioner shall deposit an amount of ₹75,000/- within a period of one month from today and also furnish adequate security for the balance amount as ordered in the impugned order.

Accordingly, modifying the impugned order as above, this writ petition is disposed of.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV