IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 17293 of 2015 (J)

PETITIONER(S):

COSMOPOLITAN HOSPITAL (PVT) LTD,
POTTAKUZHY JN., MURINJAPALAM, PATTOM,
THIRUVANANTHAPURAM-695 004,
REPRESENTED BY ITS MANAGING DIRECTOR
MS.CHANDRIKA MENON.

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

RESPONDENT(S):
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1. INTELLIGENCE OFFICER,
SQUAD NO.VII, COMMERCIAL TAXES,
THIRUVANANTHAPURAM AT NEYYATTINKARA.

2. THE ASSISTANT COMMISSIONER [ASSESSMENT]
COMMERCIAL TAXES, SPECIAL CIRCLE, TAX TOWERS,
KARAMANA, THIRUVANANTHAPURAM-695 002.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 17293 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- **COPY OF ANNUAL RETURN FILED FOR THE YEAR 2013-2014.**

P2- **COPY OF PROFIT AND LOSS ACCOUNT FOR THE YEAR 2013-2014.**

P3- **COPY OF SIR DATED 25.04.2014 ISSUED BY THE 1ST RESPONDENT.**

P4- **COPY OF NOTICE DATED 30.09.2014 ISSUED BY THE 1ST RESPONDENT.**

P5- **COPY OF NOTICE DATED 18.11.2014 ISSUED BY THE 1ST RESPONDENT.**

P6- **COPY OF REPLY DATED 17.12.2014.**

P7- **COPY OF PENALTY ORDER DATED 18.03.2015 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2013-14.**

P7(A)- **COPY OF PENALTY ORDER DATED 18.03.2015 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2014-15.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.17293 of 2015

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Dated this the 18th day of June, 2015

JUDGMENT

The petitioner is a hospital. They have approached this Court challenging an order passed under the Kerala Tax on Luxuries Act, 1976.

2. The main grievance of the petitioner is that in spite of seeking separate opportunity to produce books of accounts maintained in "Tally Software", the Authority gave no opportunity to the petitioner.

3. Learned counsel for the petitioner points out particularly to the last paragraph of the reply given on 17.12.2014 and submits that on account of voluminous of the details, the accounts can be verified either by taking print out of the ledger accounts maintained in CD or by verifying the records in the computer data system.

4. I have gone through the impugned order. The impugned order, essentially, based on the materials collected at the time of inspection by the first respondent. It is noted that the petitioner is not in habbit of issuing separate bills as prescribed under the Kerala Tax

on Luxuries Act, 1976 for the patients occupying rooms in the hospital. The petitioner submits that based on the records maintained by them, the estimation now arrived can be proved wrong and therefore, they may be given an opportunity to substantiate their contention.

5. The petitioner further submits that they maintain the books of accounts by using “Tally Software”. It may be possible for the petitioner to prove the data estimation if the accounts maintained in the “Tally Software” to be verified by the first respondent. But, the petitioner instead of making attempt to prove that, they asked the Officer concerned to verify from the Tally by deputing an Inspector to the Hospital.

6. I am of the view, considering the voluminous of account details and the nature of the request made by the petitioner to arrive at a proper estimation, an opportunity should be given to the petitioner. The details now relied by the Authorities based on the materials collected by the first respondent during inspection and also taking note of the fact that there is no system in the Hospital to maintain separate details for the purpose of Luxury Tax and also considering the amount now imposed, I am of the view that substantial justice demands an

opportunity should be given to the petitioner. However, this Court cannot ignore the probable estimate now made by the Authority which would come to around Rs.48 lakhs and to enable the petitioner an opportunity that the demand cannot be simply ignored. In that view of the matter, to substantiate the petitioner's contention if the matter is relegated, it should be based on the payment of a portion of the amount now demanded. Accordingly, Ext.P7 is remitted back on condition that the petitioner shall deposit Rs.5 lakhs within one month. The petitioner shall make use of the opportunity to substantiate their contention either by producing CD or taking note of the print out from the Software before the Authority. The petitioner shall appear before the Authority on 10.7.2015 and thereafter, the entire exercise shall be completed within six weeks thereafter. It is made clear that if the petitioner fails to deposit the above amount, the petitioner will not be entitled to the benefit of the judgment.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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