IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 17923 of 2015 (M)

PETITIONER(S):

R.RAMESH, PROPRIETOR,
M/S. SREE VISHNU POLYMERS, R.V.P PUDUR,
KOZHINJAMPARA, CHITTUR, PALAKKAD.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER,
   DEPARTMENT OF COMMERCIAL TAXES, CHITTUR,
   PALAKKAD 678 014.

2. THE ASSISTANT COMMISSIONER (APPEALS),
   DEPARTMENT OF COMMERCIAL TAXES, PALAKKAD 678 001.

3. THE INSPECTING ASSISTANT COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES, CHITTUR,
   PALAKKAD 678 104.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 17923 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF ASSESSMENT ORDER PASSED BY IST RESPONDENT FOR THE YEAR 2013-2014 DATED 16.9.14.

EXHIBIT P2. COPY OF THE APPEAL FIELD BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 23.11.14.

EXHIBIT P3. COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 23.11.14.

EXHIBIT P4. COPY OF THE STAY ORDER PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2013-14 DATED 12.5.15.

EXHIBIT P5. COPY OF THE JUDGMENT IN WPC 13646 OF 2015 DATED 8.5.15.

EXHIBIT P6. COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY THE 3RD RESPONDENT FOR THE YEAR 2013-14 DATED 18.3.15.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.17923 of 2015

Dated this the 16th day of June, 2015

J U D G M E N T

The petitioner challenges Ext.P4 order passed in the stay application preferred along with an appeal against the assessment order for the year 2013-14 passed by the 1st respondent. In the above stay order, the petitioner has been directed to remit 30% of the disputed tax within two weeks and to furnish adequate security for the remaining amount.

2. The learned counsel for the petitioner submits that the appellate authority, while passing the order, did not advert to the petitioner's contentions. It is further submitted that, no defect was noticed during Audit in Form 18B and therefore, the assessment order passed alleging stock variation is not sustainable. It is also submitted that, gross profit or low turn over etc. are not valid reasons to make best judgment assessments. These vital arguments of the petitioner has not been adverted by the appellate authority.

3. I have also gone through the impugned order. Except stating that the appellant had made a *prima facie* case, no other reasons have been stated while ordering conditional stay. In such circumstances, the *prima facie* case has to be adverted with respect to the arguments of the petitioner other than narration of facts of

the case. Accordingly, the impugned order is set aside.

4. Considering the facts that the petitioner is a registered dealer and the appeal was filed in the year 2014, and also taking into account the total demand, the appellate authority is directed to dispose of the appeal within three months, after notice to the petitioner. Till disposal of the appeal as directed above, all recovery proceedings shall be kept in abeyance.

This writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

AV