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. 18011 of 2015 (B)

PETITIONER :

M/S.PERIYANAYAKI AMMAN PLASTICS,
RVP PUDUR, CHITTUR, PALAKKAD,
REPRESENTED BY ITS MANAGING PARTNER,
A.BABU RAJ, AGED 54 YEARS,

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

RESPONDENTS :

1. THE COMMERCIAL TAX OFFICER
DEPARMENT OF COMMERCIAL TAXES,
CHITTUR, PALAKKAD 678104

2. THE ASSISTANT COMMISSIONER (APPEALS)
DEPARTMENT OF COMMERCIAL TAXES, PALAKKAD 678001

3. THE INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, CHITTUR
PALAKKAD 678104

R1 TO R3 BY SENIOR GOVERNMENT PLEADER
SMT. SHOBA ANNAMMA EAPPEN

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

bp

WP(C).No. 18011 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2013-14 DATED 16.09.2014

P2: TRUE COPY OF THE APPEAL FILED BY THE PETITOINER BEFORE THE 2ND RESPONDENT DATED 23.11.2014

P3: TRUE COPY OF THE STAY PETITION FILED BY THE PETITONER BEFORE THE 2ND RESPONDENT DATED 23.11.2014.

P4: TRUE COPY OF THE STAY ORDER PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2013-14 DATED 12.05.2015.

P5: TRUE COPY OF THE JUDGMENT IN WPC.NO.13646/2015 DATED 08.05.2015.

P6: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY THE 3RD RESPONDENT DATED 18.03.2015

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.18011 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