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. 18029 of 2015 (C)

PETITIONER :

M/S.ARTECH GROUP CONTRACTING
ARTECH HOUSE, TC 24/1014-1, THYCAUD
THIRUVANANTHAPURAM-14
REPRESENTED BY ITS MANAGING
PARTNER-T.S.ASOK, AGED 48 YEARS

BY ADVS.SRI.V.V.ASOKAN (SR.)
SRI.K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA

RESPONDENTS :
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1. ASSISTANT COMMISSIONER (WORKS CONTRACT), COMMERCIAL TAXES, THIRUVANATHAPURAM - 695001.

2. DEPUTY COMMISSIONER (APPEALS) COMMERCIAL TAXES, TAX TOWERS, KARAMANA THIRUVANANTHAPURAM - 695002.

3. INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL TAXES (RECOVERY) THIRUVANANTHAPURAM - 695001.

4. THE TAHSILDAR (REVENUE RECOVERY) THIRUVANANTHAPURAM-695001.

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. 18029 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PRE-ASSESSMENT NOTICE ISSUED BY THE IST RESPONDENT (AY-2013-2014) DATED 18.12.2014.

EXHIBIT P2: TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER TO THE IST RESPONDENT DATED 16.1.2015.

EXHIBIT P3: TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY THE IST RESPONDENT DATED 4.2.2015.

EXHIBIT P4: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE AY-2013-14 DATED 16.3.2015.

EXHIBIT P5: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.9588/2015 DATED 25.3.2015.

EXHIBIT P6: TRUE COPY OF THE STAY ORDER PASSED BY THE 2ND RSPONDENT IN KVATA NO.665 OF 2014 DATED 28.3.2015.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.18029 of 2015

Dated this the 16th day of June, 2015

J U D G M E N T

The petitioner has filed this writ petition aggrieved by the order passed in the stay application moved before the appellate authority.

2. The main contention of the learned counsel for the petitioner is that, the appellate authority had not adverted to the denial of natural justice by the Assessing Authority. In view of the dictum in ***Suzion Infrastructures Service Ltd. v. Commercial Tax Officer (W.C), Commercial Taxes, Kochi [2010 (35) VST 451]***, it was incumbent on the part of the Assessing Authority to give sufficient opportunity of hearing to the petitioner, when the authority is dissatisfied with the reply filed by the petitioner. The petitioner submits that, this issue is covered in favour of the petitioner in the light of ***Suzion Infrastructures Service Ltd.***'s case (cited supra). Therefore it is contended that, imposing condition while considering the stay application is unwarranted.

3. I am of the view that, *prima facie* the appellate authority did not advert to the petitioner's contentions in the appeal, that they were denied opportunity of hearing. Necessarily, the outcome of the appeal would also revolve around answering that question. In that view of the matter, the impugned order is set aside. The appellate authority is directed to reconsider the matter in the light of the above observations and dispose of the stay application within a

period of two months from the date of receipt of a copy of this judgment,. In view of the above, the recovery proceedings against the petitioner shall be deferred till the matter is re-heard and disposed of by the appellate authority.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV