IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 19742 of 2015 (P)
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PETITIONER(S) :

M/S.S.B.DEVELOPERS,
PALLIKULAM, KANNUR- 670 011,
REPRESENTED BY ITS PROPRIETOR, SHRI SURESH BABU.M,

BY SRI.T.M.SREEDHARAN (SENIOR ADVOCATE)
ADVS. SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENT(S) :
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1. **THE COMMERCIAL TAX OFFICER (WORKS CONTRACT),**
   COMMERCIAL TAXES, KANNUR 670 001.

2. **THE ASSISTANT COMMISSIONER (APPEALS),**
   DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE- 673 001.

3. **THE STATE OF KERALA,**
   REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

BY SR.GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 19742 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: **TRUE COPY OF THE RE-ASST. ORDER NO.32121208095/10-11 ALONG WITH THE DEMAND NOTICE DATED 20.09.2014 PASSED BY THE FIRST RESPONDENT FOR AY 2010-11.**

P2: **TRUE COPY OF THE RE-ASST. ORDER NO.32121208095/11-12 ALONG WITH THE DEMAND NOTICE DATED 20.09.2014 PASSED BY THE FIRST RESPONDENT FOR AY 2011-12.**

P3: **TRUE COPY OF THE RE-ASST. ORDER NO.32121208095/12-13 ALONG WITH THE DEMAND NOTICE DATED 20.09.2014 PASSED BY THE FIRST RESPONDENT FOR AY 2012-13.**

P4: **TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 29.12.2014 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR AY 2010-11.**

P4 (A): **TRUE COPY OF THE STAY PETITION DATED 29.12.2014 - DO-**

P5: **TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 29.12.2014 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR AY 2011-12.**

P5(A): **TRUE COPY OF THE STAY PETITION DATED 29.12.2014 - DO-**

P6: **TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 29.12.2014 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR AY 2012-13.**

P6(A): **TRUE COPY OF THE STAY PETITION DATED 29.12.2014 - DO-**

P7: **TRUE COPY OF ORDER NO.SP.299/2015 IN VATA 05/15, 06/15 AND 07/17 DATED 23.04.2015 PASSSED BY THE SECOND RESPONDENT.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.
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W.P.(C) No.19742 of 2015
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Dated this the 3rd day of July, 2015

JUDGMENT

The petitioner, impugning in a conditional order passed in the stay application by the Appellate Authority, have approached this Court. The petitioner is a builder. The petitioner's case is that in terms of the works contract, the value of the goods transported is only liable for tax and not the land value, which is the subject matter of the contract. The Assessing Authority repelled the petitioner's contention for the reason that the petitioner has failed to produce the sale deed though the petitioner has produced agreement of sale.

2. The petitioner submits that while imposing condition, the Appellate Authority failed to note the petitioner's claim for exclusion of the land value in the light of the judgment of the Hon'ble Supreme Court in **Larsan & Toubro V. State of Karnataka [(2014) 22 KTR 1 (SC)] and State of Karnataka v. Reddy Structures Pvt. Ltd. [(2014) 70 VST 329]** and the Service

Tax and VAT are also not form part of the taxable turnover.

3. The issue is relating to whether the land would form part of taxable turnover is a mixed question of fact and law, it can be only adverted at the final hearing after verifying the relevant records. Perhaps, for these reasons, the Appellate Authority relegated to this issue at the final hearing and imposed a conditional order directing the petitioner to deposit 30% of the demand. The petitioner's arguments require meritorious consideration at the time of final hearing and not at the stage of imposing conditional stay. Nevertheless, it may have a bearing while imposing a quantum of the amount directed to be deposited by the petitioner.

Though, the Appellate Authority is justified in imposing a condition, I am of the view, the condition can be now modified as the payment of Rs.1 lakh within one month and the petitioner shall abide by all other conditions in the impugned order. Accordingly, the impugned order is modified.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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